

AMENDED IN ASSEMBLY FEBRUARY 18, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 101

Introduced by Assembly Member La Suer

January 10, 2003

An act to amend Sections 6455 and 10471 of the Business and Professions Code, to amend Sections 704.090, and 2033.5 of the Code of Civil Procedure, to amend Section 13963 of the Government Code, to amend Sections 243, 262, 273.5, 273.6, 422.95, 484.1, 550, 1202.4, 1203, 1203.044, 1203.097, 1203.1, 1203.1d, 1203.2, 1203.3, 1214, 1463.18, 2085.5, and 3000 of, to add Title 8.5 (commencing with Section 1230) to Part 2 of, and to repeal Sections 1202.42, 1202.43, 1202.45, 1202.46, 1214.5 of, the Penal Code, and to amend Sections 730.6, 1752.81, 1752.82, and 1766.1 of the Welfare and Institutions Code, relating to restitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 101, as amended, La Suer. Restitution.

Existing law provides that, upon conviction for a crime, a court shall order full restitution for all victims and restitution fines against defendants, except in limited circumstances. Other existing statutes provide for grants to benefit victims of crime that are paid for from the fund into which restitution fines and other specified payments are deposited.

This bill would rewrite provisions concerning restitution by deleting various disparate provisions and, instead, enacting a more comprehensive provision concerning restitution. In general, it would recast and clarify certain provisions relating to the ordering and

collecting of restitution and restitution fines, correct anachronistic cross references, and make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There are three distinct means broadly within the ambit of
4 criminal procedure for compensating victims of crimes for their
5 losses, as follows:

6 (1) The first method is the civil restitution order. These orders
7 are required by Section 28 of Article I of the California
8 Constitution to accompany any conviction that causes a loss to a
9 crime victim, unless compelling and extraordinary reasons exist to
10 the contrary. Existing law provides they are enforceable by a
11 victim as a civil judgment immediately, and that these orders do
12 not expire upon the release of the convicted person from probation
13 or upon the completion of sentenced time. Civil restitution orders
14 are imposed to compensate a victim for loss, without regard to any
15 adverse or other impact on the convicted payer.

16 (2) The second method is the imposition of a payment
17 requirement against a civil restitution order as a condition of
18 probation, requiring a person convicted of victimizing another to
19 repay some or all of the victim's loss at a rate specified by the court
20 during the period of probation. These orders are imposed as
21 conditions of probation to rehabilitate offenders by causing them
22 to appreciate the true costs of their actions. Payments are credited
23 toward the civil restitution balance.

24 (3) The third method is the payment of grants to victims of
25 crime pursuant to Chapter 5 (commencing with Section 13950) of
26 Part 4 of Division 3 of Title 2 of the Government Code by the
27 California Victim Compensation and Government Claims Board
28 from the Restitution Fund, a fund which contains restitution fines
29 collected from persons convicted of crimes. These grants are to
30 compensate victims of crime generally, not necessarily the victim
31 or victims of the particular defendant who pays the fine. Payment
32 of restitution fines is generally required of persons convicted of all
33 types of criminal offenses, regardless of whether those offenses



1 were victimless or whether any victims suffered a loss. Victims
2 may receive these grants for crimes for which a defendant is unable
3 to pay, or even for unsolved crimes.

4 (b) These sources of assistance to victims of crime, while
5 related in purpose, are created by distinct statutory language,
6 under differing authority, and sometimes in support of different
7 policy goals. Unfortunately, because restitution has been
8 addressed in so many parts of the California codes, sometimes in
9 parallel and other times in conflicting language, it has become
10 difficult to understand the statutory restitution scheme. Errors by
11 courts, prosecutors, defendants, defense counsel, probation
12 officers, and others have frequently led to the loss of restitution for
13 victims, and improper orders against defendants.

14 (c) It is the intent of the Legislature in enacting this bill to
15 consolidate myriad provisions relating to the compensation of
16 victims of crime in order to simplify the application of the law
17 relating to restitution. It is also the intent of the Legislature to
18 resolve issues of statutory interpretation caused by the dispersal of
19 various provisions relating to restitution around the codes, and by
20 confusion in statutes relating to restitution, by clarifying the
21 language to express the intent of the legislature regarding the
22 existing law of restitution. It is not the intent of the Legislature in
23 enacting this consolidation to change the substance of the statutory
24 law regarding restitution, and any clarifications of the language
25 shall be applicable to all cases considered by the court.

26 SEC. 2. Section 6455 of the Business and Professions Code
27 is amended to read:

28 6455. (a) Any consumer injured by a violation of this chapter
29 may file a complaint and seek redress in any municipal or superior
30 court for injunctive relief, restitution, and damages. Attorney's
31 fees shall be awarded in this action to the prevailing plaintiff.

32 (b) Any person who violates the provisions of Section 6451 or
33 6452 is guilty of an infraction for the first violation, which is
34 punishable upon conviction by a fine of up to two thousand five
35 hundred dollars (\$2,500) as to each consumer with respect to
36 whom a violation occurs, and is guilty of a misdemeanor for the
37 second and each subsequent violation, which is punishable upon
38 conviction by a fine of two thousand five hundred dollars (\$2,500)
39 as to each consumer with respect to whom a violation occurs, or
40 imprisonment in a county jail for not more than one year, or by

1 both that fine and imprisonment. Any person convicted of a
2 violation of this section shall be ordered by the court to pay
3 restitution to the victim pursuant to Section 1231 of the Penal
4 Code.

5 SEC. 3. Section 10471 of the Business and Professions Code
6 is amended to read:

7 10471. (a) When an aggrieved person obtains (1) a final
8 judgment in a court of competent jurisdiction, including, but not
9 limited to, a criminal restitution order issued pursuant to Section
10 1231 of the Penal Code or Section 3663 of Title 18 of the United
11 States Code, or (2) an arbitration award that includes findings of
12 fact and conclusions of law rendered in accordance with the rules
13 established by the American Arbitration Association or another
14 recognized arbitration body, and in accordance with Sections 1281
15 to 1294.2, inclusive, of the Code of Civil Procedure where
16 applicable, and where the arbitration award has been confirmed
17 and reduced to judgment pursuant to Section 1287.4 of the Code
18 of Civil Procedure, against a defendant based upon the defendant's
19 fraud, misrepresentation, or deceit, made with intent to defraud, or
20 conversion of trust funds, arising directly out of any transaction in
21 which the defendant, while licensed under this part, performed
22 acts for which a real estate license was required, the aggrieved
23 person may, upon the judgment becoming final, file an application
24 with the Department of Real Estate for payment from the Recovery
25 Account, within the limitations specified in Section 10474, of the
26 amount unpaid on the judgment that represents an actual and direct
27 loss to the claimant in the transaction. As used in this chapter,
28 "court of competent jurisdiction" includes the federal courts, but
29 does not include the courts of another state.

30 (b) The application shall be delivered in person or by certified
31 mail to an office of the department not later than one year after the
32 judgment has become final.

33 (c) The application shall be made on a form prescribed by the
34 department, verified by the claimant, and shall include the
35 following:

36 (1) The name and address of the claimant.

37 (2) If the claimant is represented by an attorney, the name,
38 business address, and telephone number of the attorney.

39 (3) The identification of the judgment, the amount of the claim
40 and an explanation of its computation.

1 (4) A detailed narrative statement of the facts in explanation of
2 the allegations of the complaint upon which the underlying
3 judgment is based.

4 (5) (A) Except as provided in subparagraph (B), a statement
5 by the claimant, signed under penalty of perjury, that the complaint
6 upon which the underlying judgment is based was prosecuted
7 conscientiously and in good faith. As used in this section,
8 “conscientiously and in good faith” means that no party
9 potentially liable to the claimant in the underlying transaction was
10 intentionally and without good cause omitted from the complaint,
11 that no party named in the complaint who otherwise reasonably
12 appeared capable of responding in damages was dismissed from
13 the complaint intentionally and without good cause, and that the
14 claimant employed no other procedural means contrary to the
15 diligent prosecution of the complaint in order to seek to qualify for
16 the Recovery Account.

17 (B) For the purpose of an application based on a criminal
18 restitution order, all of the following statements by the claimant:

19 (i) The claimant has not intentionally and without good cause
20 failed to pursue any person potentially liable to the claimant in the
21 underlying transaction other than a defendant who is the subject of
22 a criminal restitution order.

23 (ii) The claimant has not intentionally and without good cause
24 failed to pursue in a civil action for damages all persons potentially
25 liable to the claimant in the underlying transaction who otherwise
26 reasonably appeared capable of responding in damages other than
27 a defendant who is the subject of a criminal restitution order.

28 (iii) The claimant employed no other procedural means
29 contrary to the diligent prosecution of the complaint in order to
30 seek to qualify for the Recovery Account.

31 (6) The name and address of the judgment debtor or, if not
32 known, the names and addresses of persons who may know the
33 judgment debtor’s present whereabouts.

34 (7) The following representations and information from the
35 claimant:

36 (A) That he or she is not a spouse of the judgment debtor nor
37 a personal representative of the spouse.

38 (B) That he or she has complied with all of the requirements of
39 this chapter.

1 (C) That the judgment underlying the claim meets the
2 requirements of subdivision (a).

3 (D) A description of searches and inquiries conducted by or on
4 behalf of the claimant with respect to the judgment debtor's assets
5 liable to be sold or applied to satisfaction of the judgment, an
6 itemized valuation of the assets discovered, and the results of
7 actions by the claimant to have the assets applied to satisfaction of
8 the judgment.

9 (E) That he or she has diligently pursued collection efforts
10 against all judgment debtors and all other persons liable to the
11 claimant in the transaction that is the basis for the underlying
12 judgment.

13 (F) That the underlying judgment and debt have not been
14 discharged in bankruptcy, or, in the case of a bankruptcy
15 proceeding that is open at or after the time of the filing of the
16 application, that the judgment and debt have been declared to be
17 nondischargeable.

18 (G) That the application was mailed or delivered to the
19 department no later than one year after the underlying judgment
20 became final.

21 (d) If the claimant is basing his or her application upon a
22 judgment against a salesperson, and the claimant has not obtained
23 a judgment against that salesperson's employing broker, if any, or
24 has not diligently pursued the assets of that broker, the application
25 shall be denied for failure to diligently pursue the assets of all other
26 persons liable to the claimant in the transaction unless the claimant
27 can demonstrate, by clear and convincing evidence, either that the
28 salesperson was not employed by a broker at the time of the
29 transaction, or that the salesperson's employing broker would not
30 have been liable to the claimant because the salesperson was acting
31 outside the scope of his or her employment by the broker in the
32 transaction.

33 (e) The application form shall include detailed instructions
34 with respect to documentary evidence, pleadings, court rulings,
35 the products of discovery in the underlying litigation, and a notice
36 to the applicant of his or her obligation to protect the underlying
37 judgment from discharge in bankruptcy, to be appended to the
38 application.

39 (f) An application for payment from the Recovery Account that
40 is based on a criminal restitution order shall comply with all of the



requirements of this chapter. For the purpose of an application based on a criminal restitution order, the following terms have the following meanings:

(1) “Judgment” means the criminal restitution order.

(2) “Complaint” means the facts of the underlying transaction upon which the criminal restitution order is based.

(3) “Judgment debtor” means any defendant who is the subject of the criminal restitution order.

The amendments to this section made at the July 1997–98 Regular Session shall become operative July 1, 2000.

SEC. 4. Section 704.090 of the Code of Civil Procedure is amended to read:

704.090. (a) The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate’s trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of one thousand dollars (\$1,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

(b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or order imposed pursuant to Title 8.5 (commencing with Section 1230) of Part 2 of the Penal Code, the funds held in trust for, or to the credit of, a judgment debtor described in subdivision (a) are exempt in the amount of three hundred dollars (\$300) without making a claim.

SEC. 5. Section 2033.5 of the Code of Civil Procedure is amended to read:

2033.5. (a) The Judicial Council shall develop and approve official form interrogatories and requests for admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact for use in any civil action in a state court based on personal injury, property damage, wrongful death, unlawful detainer, breach of contract, family law, or fraud and for any other civil actions the Judicial Council deems appropriate. Use of the approved form interrogatories and requests for admission shall be optional.

(b) In developing the form interrogatories and requests for admission required by this section, the Judicial Council shall consult with a representative advisory committee which shall include, but not be limited to, representatives of the plaintiff's bar, the defense bar, the public interest bar, court administrators, and the public. The form interrogatories and requests for admission shall be drafted in nontechnical language and shall be made available through the office of the clerk of the appropriate trial court.

(c) The Judicial Council also shall promulgate any necessary rules to govern the use of the form interrogatories and requests for admission.

(d) The Judicial Council shall develop and approve official form interrogatories for use by a victim who has not received complete payment of a restitution order made pursuant to Section 1231 of the Penal Code.

(e) Notwithstanding whether a victim initiates or maintains an action to satisfy the unpaid restitution order, a victim may propound the form interrogatories approved pursuant to this section once each calendar year. The defendant subject to the restitution order shall, in responding to the interrogatories propounded, provide current information regarding the nature, extent, and location of any assets, income, and liabilities in which the defendant claims a present or future interest.

(f) This section shall become operative on January 1, 2000.

SEC. 6. Section 13963 of the Government Code is amended to read:

13963. (a) The board shall be subrogated to the rights of the recipient to the extent of any compensation granted by the board. The subrogation rights shall be against the perpetrator of the crime or any person liable for the losses suffered as a direct result of the crime which was the basis for receipt of compensation, including an insurer held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) The board shall also be entitled to a lien on any judgment, award, or settlement in favor of or on behalf of the recipient for losses suffered as a direct result of the crime that was the basis for receipt of compensation in the amount of the compensation granted by the board. The board may recover this amount in a

1 separate action, or may intervene in an action brought by or on
2 behalf of the recipient. If a claim is filed within one year of the date
3 of recovery, the board shall pay 25 percent of the amount of the
4 recovery that is subject to a lien on the judgment, award, or
5 settlement, to the recipient responsible for recovery thereof from
6 the perpetrator of the crime, provided that the total amount of the
7 lien is recovered. The remaining 75 percent of the amount, and any
8 amount not claimed within one year pursuant to this section, shall
9 be deposited in the Restitution Fund.

10 (c) The board may compromise or settle and release any lien
11 pursuant to this chapter if it is found that the action is in the best
12 interest of the state or the collection would cause undue hardship
13 upon the recipient. Repayment obligations to the Restitution Fund
14 shall be enforceable as a summary judgment.

15 (d) No judgment, award, or settlement in any action or claim by
16 a recipient, where the board has an interest, shall be satisfied
17 without first giving the board notice and a reasonable opportunity
18 to perfect and satisfy the lien. The notice shall be given to the board
19 in Sacramento except in cases where the board specifies that the
20 notice shall be given otherwise. The notice shall include the
21 complete terms of the award, settlement, or judgment, and the
22 name and address of any insurer directly or indirectly providing
23 for the satisfaction.

24 (e) (1) If the recipient brings an action or asserts a claim for
25 damages against the person or persons liable for the injury or death
26 giving rise to an award by the board under this chapter, notice of
27 the institution of legal proceedings, notice of all hearings,
28 conferences, and proceedings, and notice of settlement shall be
29 given to the board in Sacramento except in cases where the board
30 specifies that notice shall be given to the Attorney General. Notice
31 of the institution of legal proceedings shall be given to the board
32 within 30 days of filing the action. All notices shall be given by the
33 attorney employed to bring the action for damages or by the
34 recipient if no attorney is employed.

35 (2) Notice shall include all of the following:

36 (A) Names of all parties to the claim or action.

37 (B) The address of all parties to the claim or action except for
38 those persons represented by attorneys and in that case the name
39 of the party and the name and address of the attorney.

40 (C) The nature of the claim asserted or action brought.

(D) In the case of actions before courts or administrative agencies, the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number.

(3) When the recipient or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by an insurer, or is insured for the injury caused to the recipient, notice shall include a statement of that fact and the name and address of the insurer. Upon request of the board, a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 1233 of the Penal Code or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10-percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Chapter 4 (commencing with Section 1233) of Title 8.5 of Part 2 of the Penal Code or Section 730.6 of the Welfare and Institutions Code. The 10-percent rebates shall not be used to supplant county funding.

(g) In the event of judgment or award in a suit or claim against a third party or insurer, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the board, allow as a lien against the amount of the judgment or award, the amount of the compensation granted by the board to the recipient for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based.

1 (h) For purposes of this section, “recipient” means any person
2 who has received compensation or will be provided compensation
3 pursuant to this chapter, including the victim’s guardian,
4 conservator or other personal representative, estate, and survivors.

5 SEC. 7. Section 243 of the Penal Code is amended to read:

6 243. (a) A battery is punishable by a fine not exceeding two
7 thousand dollars (\$2,000), or by imprisonment in a county jail not
8 exceeding six months, or by both that fine and imprisonment.

9 (b) When a battery is committed against the person of a peace
10 officer, custodial officer, firefighter, emergency medical
11 technician, lifeguard, process server, traffic officer, or animal
12 control officer engaged in the performance of his or her duties,
13 whether on or off duty, including when the peace officer is in a
14 police uniform and is concurrently performing the duties required
15 of him or her as a peace officer while also employed in a private
16 capacity as a part-time or casual private security guard or
17 patrolman, or a nonsworn employee of a probation department
18 engaged in the performance of his or her duties, whether on or off
19 duty, or a physician or nurse engaged in rendering emergency
20 medical care outside a hospital, clinic, or other health care facility,
21 and the person committing the offense knows or reasonably should
22 know that the victim is a peace officer, custodial officer,
23 firefighter, emergency medical technician, lifeguard, process
24 server, traffic officer, or animal control officer engaged in the
25 performance of his or her duties, nonsworn employee of a
26 probation department, or a physician or nurse engaged in
27 rendering emergency medical care, the battery is punishable by a
28 fine not exceeding two thousand dollars (\$2,000), or by
29 imprisonment in a county jail not exceeding one year, or by both
30 that fine and imprisonment.

31 (c) (1) When a battery is committed against a custodial officer,
32 firefighter, emergency medical technician, lifeguard, process
33 server, traffic officer, or animal control officer engaged in the
34 performance of his or her duties, whether on or off duty, or a
35 nonsworn employee of a probation department engaged in the
36 performance of his or her duties, whether on or off duty, or a
37 physician or nurse engaged in rendering emergency medical care
38 outside a hospital, clinic, or other health care facility, and the
39 person committing the offense knows or reasonably should know
40 that the victim is a nonsworn employee of a probation department,

1 custodial officer, firefighter, emergency medical technician,
2 lifeguard, process server, traffic officer, or animal control officer
3 engaged in the performance of his or her duties, or a physician or
4 nurse engaged in rendering emergency medical care, and an injury
5 is inflicted on that victim, the battery is punishable by a fine of not
6 more than two thousand dollars (\$2,000), by imprisonment in a
7 county jail not exceeding one year, or by both that fine and
8 imprisonment, or by imprisonment in the state prison for 16
9 months, or two or three years.

10 (2) When the battery specified in paragraph (1) is committed
11 against a peace officer engaged in the performance of his or her
12 duties, whether on or off duty, including when the peace officer is
13 in a police uniform and is concurrently performing the duties
14 required of him or her as a peace officer while also employed in
15 a private capacity as a part-time or casual private security guard or
16 patrolman and the person committing the offense knows or
17 reasonably should know that the victim is a peace officer engaged
18 in the performance of his or her duties, the battery is punishable
19 by a fine of not more than ten thousand dollars (\$10,000), or by
20 imprisonment in a county jail not exceeding one year or in the state
21 prison for 16 months, or two or three years, or by both that fine and
22 imprisonment.

23 (d) When a battery is committed against any person and serious
24 bodily injury is inflicted on the person, the battery is punishable
25 by imprisonment in a county jail not exceeding one year or
26 imprisonment in the state prison for two, three, or four years.

27 (e) (1) When a battery is committed against a spouse, a person
28 with whom the defendant is cohabiting, a person who is the parent
29 of the defendant's child, former spouse, fiancé, or fiancée, or a
30 person with whom the defendant currently has, or has previously
31 had, a dating or engagement relationship, the battery is punishable
32 by a fine not exceeding two thousand dollars (\$2,000), or by
33 imprisonment in a county jail for a period of not more than one
34 year, or by both that fine and imprisonment. If probation is
35 granted, or the execution or imposition of the sentence is
36 suspended, it shall be a condition thereof that the defendant
37 participate in, for no less than one year, and successfully complete,
38 a batterer's treatment program, as defined in Section 1203.097, or
39 if none is available, another appropriate counseling program
40 designated by the court. However, this provision shall not be

1 construed as requiring a city, a county, or a city and county to
2 provide a new program or higher level of service as contemplated
3 by Section 6 of Article XIII B of the California Constitution.

4 (2) Upon conviction of a violation of this subdivision, if
5 probation is granted, the conditions of probation may include, in
6 lieu of a fine, one or both of the following requirements:

7 (A) That the defendant make payments to a battered women's
8 shelter, up to a maximum of five thousand dollars (\$5,000).

9 (B) That the defendant reimburse the victim for reasonable
10 costs of counseling and other reasonable expenses that the court
11 finds are the direct result of the defendant's offense.

12 For any order to pay a fine, make payments to a battered
13 women's shelter, or pay restitution as a condition of probation
14 under this subdivision, the court shall make a determination of the
15 defendant's ability to pay. In no event shall any order to make
16 payments to a battered women's shelter be made if it would impair
17 the ability of the defendant to pay direct restitution to the victim
18 or court-ordered child support. Where the injury to a married
19 person is caused in whole or in part by the criminal acts of his or
20 her spouse in violation of this section, the community property
21 may not be used to discharge the liability of the offending spouse
22 for restitution to the injured spouse, required by Section 1231, or
23 to a shelter for costs with regard to the injured spouse and
24 dependents, required by this section, until all separate property of
25 the offending spouse is exhausted.

26 (3) Upon conviction of a violation of this subdivision, if
27 probation is granted or the execution or imposition of the sentence
28 is suspended and the person has been previously convicted of a
29 violation of this subdivision and sentenced under paragraph (1),
30 the person shall be imprisoned for not less than 48 hours in addition
31 to the conditions in paragraph (1). However, the court, upon a
32 showing of good cause, may elect not to impose the mandatory
33 minimum imprisonment as required by this subdivision and may,
34 under these circumstances, grant probation or order the suspension
35 of the execution or imposition of the sentence.

36 (4) The Legislature finds and declares that these specified
37 crimes merit special consideration when imposing a sentence so as
38 to display society's condemnation for these crimes of violence
39 upon victims with whom a close relationship has been formed.

40 (f) As used in this section:

1 (1) “Peace officer” means any person defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2.

3 (2) “Emergency medical technician” means a person who is
4 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a
5 valid certificate or license in accordance with the standards of
6 Division 2.5 (commencing with Section 1797) of the Health and
7 Safety Code.

8 (3) “Nurse” means a person who meets the standards of
9 Division 2.5 (commencing with Section 1797) of the Health and
10 Safety Code.

11 (4) “Serious bodily injury” means a serious impairment of
12 physical condition, including, but not limited to, the following:
13 loss of consciousness; concussion; bone fracture; protracted loss
14 or impairment of function of any bodily member or organ; a
15 wound requiring extensive suturing; and serious disfigurement.

16 (5) “Injury” means any physical injury which requires
17 professional medical treatment.

18 (6) “Custodial officer” means any person who has the
19 responsibilities and duties described in Section 831 and who is
20 employed by a law enforcement agency of any city or county or
21 who performs those duties as a volunteer.

22 (7) “Lifeguard” means a person defined in paragraph (5) of
23 subdivision (c) of Section 241.

24 (8) “Traffic officer” means any person employed by a city,
25 county, or city and county to monitor and enforce state laws and
26 local ordinances relating to parking and the operation of vehicles.

27 (9) “Animal control officer” means any person employed by
28 a city, county, or city and county for purposes of enforcing animal
29 control laws or regulations.

30 (10) “Dating relationship” means frequent, intimate
31 associations primarily characterized by the expectation of
32 affectional or sexual involvement independent of financial
33 considerations.

34 (g) It is the intent of the Legislature by amendments to this
35 section at the 1981–82 and 1983–84 Regular Sessions to abrogate
36 the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and
37 *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior
38 judicial interpretations of this section as they relate to criminal
39 sanctions for battery on peace officers who are employed, on a
40 part-time or casual basis, while wearing a police uniform as private

1 security guards or patrolmen and to allow the exercise of peace
2 officer powers concurrently with that employment.

3 SEC. 8. Section 262 of the Penal Code is amended to read:

4 262. (a) Rape of a person who is the spouse of the perpetrator
5 is an act of sexual intercourse accomplished under any of the
6 following circumstances:

7 (1) Where it is accomplished against a person's will by means
8 of force, violence, duress, menace, or fear of immediate and
9 unlawful bodily injury on the person or another.

10 (2) Where a person is prevented from resisting by any
11 intoxicating or anesthetic substance, or any controlled substance,
12 and this condition was known, or reasonably should have been
13 known, by the accused.

14 (3) Where a person is at the time unconscious of the nature of
15 the act, and this is known to the accused. As used in this paragraph,
16 "unconscious of the nature of the act" means incapable of
17 resisting because the victim meets one of the following conditions:

18 (A) Was unconscious or asleep.

19 (B) Was not aware, knowing, perceiving, or cognizant that the
20 act occurred.

21 (C) Was not aware, knowing, perceiving, or cognizant of the
22 essential characteristics of the act due to the perpetrator's fraud in
23 fact.

24 (4) Where the act is accomplished against the victim's will by
25 threatening to retaliate in the future against the victim or any other
26 person, and there is a reasonable possibility that the perpetrator
27 will execute the threat. As used in this paragraph, "threatening to
28 retaliate" means a threat to kidnap or falsely imprison, or to inflict
29 extreme pain, serious bodily injury, or death.

30 (5) Where the act is accomplished against the victim's will by
31 threatening to use the authority of a public official to incarcerate,
32 arrest, or deport the victim or another, and the victim has a
33 reasonable belief that the perpetrator is a public official. As used
34 in this paragraph, "public official" means a person employed by
35 a governmental agency who has the authority, as part of that
36 position, to incarcerate, arrest, or deport another. The perpetrator
37 does not actually have to be a public official.

38 (b) Section 800 shall apply to this section. However, no
39 prosecution shall be commenced under this section unless the
40 violation was reported to medical personnel, a member of the

1 clergy, an attorney, a shelter representative, a counselor, a judicial
2 officer, a rape crisis agency, a prosecuting agency, a law
3 enforcement officer, or a firefighter within one year after the date
4 of the violation. This reporting requirement shall not apply if the
5 victim's allegation of the offense is corroborated by independent
6 evidence that would otherwise be admissible during trial.

7 (c) As used in this section, "duress" means a direct or implied
8 threat of force, violence, danger, or retribution sufficient to coerce
9 a reasonable person of ordinary susceptibilities to perform an act
10 which otherwise would not have been performed, or acquiesce in
11 an act to which one otherwise would not have submitted. The total
12 circumstances, including the age of the victim, and his or her
13 relationship to the defendant, are factors to consider in appraising
14 the existence of duress.

15 (d) As used in this section, "menace" means any threat,
16 declaration, or act that shows an intention to inflict an injury upon
17 another.

18 (e) If probation is granted upon conviction of a violation of this
19 section, the conditions of probation may include, in lieu of a fine,
20 one or both of the following requirements:

21 (1) That the defendant make payments to a battered women's
22 shelter, up to a maximum of one thousand dollars (\$1,000).

23 (2) That the defendant reimburse the victim for reasonable
24 costs of counseling and other reasonable expenses that the court
25 finds are the direct result of the defendant's offense.

26 For any order to pay a fine, make payments to a battered
27 women's shelter, or pay restitution as a condition of probation
28 under this subdivision, the court shall make a determination of the
29 defendant's ability to pay. In no event shall any order to make
30 payments to a battered women's shelter be made if it would impair
31 the ability of the defendant to pay direct restitution to the victim
32 or court-ordered child support. Where the injury to a married
33 person is caused in whole or in part by the criminal acts of his or
34 her spouse in violation of this section, the community property
35 may not be used to discharge the liability of the offending spouse
36 for restitution to the injured spouse, required by Section 1231, or
37 to a shelter for costs with regard to the injured spouse and
38 dependents, required by this section, until all separate property of
39 the offending spouse is exhausted.

40 SEC. 9. Section 273.5 of the Penal Code is amended to read:

1 273.5. (a) Any person who willfully inflicts upon a person
2 who is his or her spouse, former spouse, cohabitant, former
3 cohabitant, or the mother or father of his or her child, corporal
4 injury resulting in a traumatic condition, is guilty of a felony, and
5 upon conviction thereof shall be punished by imprisonment in the
6 state prison for two, three, or four years, or in a county jail for not
7 more than one year, or by a fine of up to six thousand dollars
8 (\$6,000) or by both that fine and imprisonment.

9 (b) Holding oneself out to be the husband or wife of the person
10 with whom one is cohabiting is not necessary to constitute
11 cohabitation as the term is used in this section.

12 (c) As used in this section, “traumatic condition” means a
13 condition of the body, such as a wound or external or internal
14 injury, whether of a minor or serious nature, caused by a physical
15 force.

16 (d) For the purpose of this section, a person shall be considered
17 the father or mother of another person’s child if the alleged male
18 parent is presumed the natural father under Sections 7611 and 7612
19 of the Family Code.

20 (e) Any person convicted of violating this section for acts
21 occurring within seven years of a previous conviction under
22 subdivision (a), or subdivision (d) of Section 243, or Section
23 243.4, 244, 244.5, or 245, shall be punished by imprisonment in
24 a county jail for not more than one year, or by imprisonment in the
25 state prison for two, four, or five years, or by both imprisonment
26 and a fine of up to ten thousand dollars (\$10,000).

27 (f) If probation is granted to any person convicted under
28 subdivision (a), the court shall impose probation consistent with
29 the provisions of Section 1203.097.

30 (g) If probation is granted, or the execution or imposition of a
31 sentence is suspended, for any defendant convicted under
32 subdivision (a) who has been convicted of any prior offense
33 specified in subdivision (e), the court shall impose one of the
34 following conditions of probation:

35 (1) If the defendant has suffered one prior conviction within the
36 previous seven years for a violation of any offense specified in
37 subdivision (e), it shall be a condition thereof, in addition to the
38 provisions contained in Section 1203.097, that he or she be
39 imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1231, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 10. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not

1 more than one thousand dollars (\$1,000), or by imprisonment in
2 a county jail for not more than one year, or by both that fine and
3 imprisonment.

4 (b) In the event of a violation of subdivision (a) which results
5 in physical injury, the person shall be punished by a fine of not
6 more than two thousand dollars (\$2,000), or by imprisonment in
7 a county jail for not less than 30 days nor more than one year, or
8 by both that fine and imprisonment. However, if the person is
9 imprisoned in a county jail for at least 48 hours, the court may, in
10 the interest of justice and for reasons stated on the record, reduce
11 or eliminate the 30-day minimum imprisonment required by this
12 subdivision. In determining whether to reduce or eliminate the
13 minimum imprisonment pursuant to this subdivision, the court
14 shall consider the seriousness of the facts before the court, whether
15 there are additional allegations of a violation of the order during
16 the pendency of the case before the court, the probability of future
17 violations, the safety of the victim, and whether the defendant has
18 successfully completed or is making progress with counseling.

19 (c) Subdivisions (a) and (b) shall apply to the following court
20 orders:

21 (1) Any order issued pursuant to Section 6320 or 6389 of the
22 Family Code.

23 (2) An order excluding one party from the family dwelling or
24 from the dwelling of the other.

25 (3) An order enjoining a party from specified behavior which
26 the court determined was necessary to effectuate the order
27 described in subdivision (a).

28 (4) Any order issued by another state that is recognized under
29 Part 5 (commencing with Section 6400) of Division 10 of the
30 Family Code.

31 (d) A subsequent conviction for a violation of an order
32 described in subdivision (a), occurring within seven years of a
33 prior conviction for a violation of an order described in
34 subdivision (a) and involving an act of violence or “a credible
35 threat” of violence, as defined in subdivision (c) of Section 139,
36 is punishable by imprisonment in a county jail not to exceed one
37 year, or in the state prison.

38 (e) In the event of a subsequent conviction for a violation of an
39 order described in subdivision (a) for an act occurring within one
40 year of a prior conviction for a violation of an order described in

1 subdivision (a) that results in physical injury to a victim, the person
2 shall be punished by a fine of not more than two thousand dollars
3 (\$2,000), or by imprisonment in a county jail for not less than six
4 months nor more than one year, by both that fine and
5 imprisonment, or by imprisonment in the state prison. However,
6 if the person is imprisoned in a county jail for at least 30 days, the
7 court may, in the interest of justice and for reasons stated in the
8 record, reduce or eliminate the six-month minimum imprisonment
9 required by this subdivision. In determining whether to reduce or
10 eliminate the minimum imprisonment pursuant to this
11 subdivision, the court shall consider the seriousness of the facts
12 before the court, whether there are additional allegations of a
13 violation of the order during the pendency of the case before the
14 court, the probability of future violations, the safety of the victim,
15 and whether the defendant has successfully completed or is
16 making progress with counseling.

17 (f) The prosecuting agency of each county shall have the
18 primary responsibility for the enforcement of orders described in
19 subdivisions (a), (b), (d), and (e).

20 (g) (1) Every person who owns, possesses, purchases, or
21 receives a firearm knowing he or she is prohibited from doing so
22 by the provisions of a protective order as defined in Section 136.2
23 of this code, Section 6218 of the Family Code, or Section 527.6 or
24 527.8 of the Code of Civil Procedure, shall be punished under the
25 provisions of subdivision (g) of Section 12021.

26 (2) Every person subject to a protective order described in
27 paragraph (1) shall not be prosecuted under this section for
28 owning, possessing, purchasing, or receiving a firearm to the
29 extent that firearm is granted an exemption pursuant to subdivision
30 (h) of Section 6389 of the Family Code.

31 (h) If probation is granted upon conviction of a violation of
32 subdivision (a), (b), (c), (d), or (e), the court shall impose
33 probation consistent with the provisions of Section 1203.097, and
34 the conditions of probation may include, in lieu of a fine, one or
35 both of the following requirements:

36 (1) That the defendant make payments to a battered women's
37 shelter or to a shelter for abused elder persons or dependent adults,
38 up to a maximum of five thousand dollars (\$5,000), pursuant to
39 Section 1203.097.



1 (2) That the defendant reimburse the victim for reasonable
2 costs of counseling and other reasonable expenses that the court
3 finds are the direct result of the defendant's offense.

4 (i) For any order to pay a fine, make payments to a battered
5 women's shelter, or pay restitution as a condition of probation
6 under subdivision (e), the court shall make a determination of the
7 defendant's ability to pay. In no event shall any order to make
8 payments to a battered women's shelter be made if it would impair
9 the ability of the defendant to pay direct restitution to the victim
10 or court-ordered child support. Where the injury to a married
11 person is caused in whole or in part by the criminal acts of his or
12 her spouse in violation of this section, the community property
13 may not be used to discharge the liability of the offending spouse
14 for restitution to the injured spouse, required by Section 1231, or
15 to a shelter for costs with regard to the injured spouse and
16 dependents, required by this section, until all separate property of
17 the offending spouse is exhausted.

18 SEC. 11. Section 422.95 of the Penal Code is amended to
19 read:

20 422.95. (a) In the case of any person who is granted probation
21 for any offense defined in Section 422.6, 422.7, 422.75, 594.3, or
22 11411, the court may order that the defendant be required to do one
23 or all of the following as a condition of probation:

24 (1) Complete a class or program on racial or ethnic sensitivity,
25 or other similar training in the area of civil rights, or a one-year
26 counseling program intended to reduce the tendency toward
27 violent and anti-social behavior if that class, program, or training
28 is available and was developed or authorized by the court or local
29 agencies in cooperation with organizations serving the affected
30 community.

31 (2) Make payments or other compensation to a
32 community-based program or local agency that provides services
33 to victims of hate violence.

34 (3) Be required to reimburse the victim for reasonable costs of
35 counseling and other reasonable expenses that the court finds are
36 the direct result of the defendant's acts.

37 (b) Any payments or other compensation ordered under this
38 section shall be in addition to restitution payments required under
39 Title 8.5 (commencing with Section 1230) of Part 2, and shall be
40 made only after that restitution is paid in full.

1 (c) It is the intent of the Legislature to encourage counties,
2 cities, and school districts to establish education and training
3 programs to prevent violations of civil rights and hate crimes.

4 SEC. 12. Section 484.1 of the Penal Code is amended to read:

5 484.1. (a) Any person who knowingly gives false
6 information or provides false verification as to the person's true
7 identity or as to the person's ownership interest in property or the
8 person's authority to sell property in order to receive money or
9 other valuable consideration from a pawnbroker or secondhand
10 dealer and who receives money or other valuable consideration
11 from the pawnbroker or secondhand dealer is guilty of theft.

12 (b) Upon conviction of the offense described in subdivision (a),
13 the court may require, in addition to any sentence or fine imposed,
14 that the defendant make restitution to the pawnbroker or
15 secondhand dealer in an amount not exceeding the actual losses
16 sustained pursuant to the provisions of subdivision (c) of Section
17 13967 of the Government Code, as operative on or before
18 September 28, 1994, if the defendant is denied probation, or
19 Section 1203.04, as operative on or before August 2, 1995, if the
20 defendant is granted probation or Section 1231.

21 (c) Upon the setting of a court hearing date for sentencing of
22 any person convicted under this section, the probation officer, if
23 one is assigned, shall notify the pawnbroker or secondhand dealer
24 or coin dealer of the time and place of the hearing.

25 SEC. 13. Section 550 of the Penal Code is amended to read:

26 550. (a) It is unlawful to do any of the following, or to aid,
27 abet, solicit, or conspire with any person to do any of the
28 following:

29 (1) Knowingly present or cause to be presented any false or
30 fraudulent claim for the payment of a loss or injury, including
31 payment of a loss or injury under a contract of insurance.

32 (2) Knowingly present multiple claims for the same loss or
33 injury, including presentation of multiple claims to more than one
34 insurer, with an intent to defraud.

35 (3) Knowingly cause or participate in a vehicular collision, or
36 any other vehicular accident, for the purpose of presenting any
37 false or fraudulent claim.

38 (4) Knowingly present a false or fraudulent claim for the
39 payments of a loss for theft, destruction, damage, or conversion of

1 a motor vehicle, a motor vehicle part, or contents of a motor
2 vehicle.

3 (5) Knowingly prepare, make, or subscribe any writing, with
4 the intent to present or use it, or to allow it to be presented, in
5 support of any false or fraudulent claim.

6 (6) Knowingly make or cause to be made any false or
7 fraudulent claim for payment of a health care benefit.

8 (7) Knowingly submit a claim for a health care benefit that was
9 not used by, or on behalf of, the claimant.

10 (8) Knowingly present multiple claims for payment of the same
11 health care benefit with an intent to defraud.

12 (9) Knowingly present for payment any undercharges for
13 health care benefits on behalf of a specific claimant unless any
14 known overcharges for health care benefits for that claimant are
15 presented for reconciliation at that same time.

16 (10) For purposes of paragraphs (6) to (9), inclusive, a claim or
17 a claim for payment of a health care benefit also means a claim or
18 claim for payment submitted by or on the behalf of a provider of
19 any workers' compensation health benefits under the Labor Code.

20 (b) It is unlawful to do, or to knowingly assist or conspire with
21 any person to do, any of the following:

22 (1) Present or cause to be presented any written or oral
23 statement as part of, or in support of or opposition to, a claim for
24 payment or other benefit pursuant to an insurance policy, knowing
25 that the statement contains any false or misleading information
26 concerning any material fact.

27 (2) Prepare or make any written or oral statement that is
28 intended to be presented to any insurer or any insurance claimant
29 in connection with, or in support of or opposition to, any claim or
30 payment or other benefit pursuant to an insurance policy, knowing
31 that the statement contains any false or misleading information
32 concerning any material fact.

33 (3) Conceal, or knowingly fail to disclose the occurrence of, an
34 event that affects any person's initial or continued right or
35 entitlement to any insurance benefit or payment, or the amount of
36 any benefit or payment to which the person is entitled.

37 (4) Prepare or make any written or oral statement, intended to
38 be presented to any insurer or producer for the purpose of
39 obtaining a motor vehicle insurance policy, that the person to be

1 the insured resides or is domiciled in this state when, in fact, that
2 person resides or is domiciled in a state other than this state.

3 (c) (1) Every person who violates paragraph (1), (2), (3), (4),
4 or (5) of subdivision (a) is guilty of a felony punishable by
5 imprisonment in the state prison for two, three, or five years, and
6 by a fine not exceeding fifty thousand dollars (\$50,000), unless the
7 value of the fraud exceeds fifty thousand dollars (\$50,000), in
8 which event the fine may not exceed double of the value of the
9 fraud.

10 (2) Every person who violates paragraph (6), (7), (8), or (9) of
11 subdivision (a) is guilty of a public offense.

12 (A) Where the claim or amount at issue exceeds four hundred
13 dollars (\$400), the offense is punishable by imprisonment in the
14 state prison for two, three, or five years, or by a fine not exceeding
15 fifty thousand dollars (\$50,000), or by both that imprisonment and
16 fine, unless the value of the fraud exceeds fifty thousand dollars
17 (\$50,000), in which event the fine may not exceed double the value
18 of the fraud, or by imprisonment in a county jail not to exceed one
19 year, by a fine of not more than one thousand dollars (\$1,000), or
20 by both that imprisonment and fine.

21 (B) Where the claim or amount at issue is four hundred dollars
22 (\$400) or less, the offense is punishable by imprisonment in a
23 county jail not to exceed six months, or by a fine of not more than
24 one thousand dollars (\$1,000), or by both that imprisonment and
25 fine, unless the aggregate amount of the claims or amount at issue
26 exceeds four hundred dollars (\$400) in any 12-consecutive-month
27 period, in which case the claims or amounts may be charged as in
28 subparagraph (A).

29 (3) Every person who violates paragraph (1), (2), (3), or (4) of
30 subdivision (b) shall be punished by imprisonment in the state
31 prison for two, three, or five years, or by a fine not exceeding fifty
32 thousand dollars (\$50,000), unless the value of the fraud exceeds
33 fifty thousand dollars (\$50,000), in which event the fine may not
34 exceed double the value of the fraud, or by both that imprisonment
35 and fine; or by imprisonment in a county jail not to exceed one
36 year, or by a fine of not more than one thousand five hundred
37 dollars (\$1,500), or by both that imprisonment and fine.

38 (d) Notwithstanding any other provision of law, probation shall
39 not be granted to, nor shall the execution or imposition of a
40 sentence be suspended for, any adult person convicted of felony

1 violations of this section who previously has been convicted of
2 felony violations of this section or Section 548, or of Section
3 1871.4 of the Insurance Code, or former Section 556 of the
4 Insurance Code, or former Section 1871.1 of the Insurance Code
5 as an adult under charges separately brought and tried two or more
6 times. The existence of any fact that would make a person
7 ineligible for probation under this subdivision shall be alleged in
8 the information or indictment, and either admitted by the
9 defendant in an open court, or found to be true by the jury trying
10 the issue of guilt or by the court where guilt is established by plea
11 of guilty or nolo contendere or by trial by the court sitting without
12 a jury.

13 Except when the existence of the fact was not admitted or found
14 to be true or the court finds that a prior felony conviction was
15 invalid, the court shall not strike or dismiss any prior felony
16 convictions alleged in the information or indictment.

17 This subdivision does not prohibit the adjournment of criminal
18 proceedings pursuant to Division 3 (commencing with Section
19 3000) or Division 6 (commencing with Section 6000) of the
20 Welfare and Institutions Code.

21 (e) Except as otherwise provided in subdivision (f), any person
22 who violates subdivision (a) or (b) and who has a prior felony
23 conviction of an offense set forth in either subdivision (a) or (b),
24 in Section 548, in Section 1871.4 of the Insurance Code, in former
25 Section 556 of the Insurance Code, or in former Section 1871.1 of
26 the Insurance Code shall receive a two-year enhancement for each
27 prior felony conviction in addition to the sentence provided in
28 subdivision (c). The existence of any fact that would subject a
29 person to a penalty enhancement shall be alleged in the
30 information or indictment and either admitted by the defendant in
31 open court, or found to be true by the jury trying the issue of guilt
32 or by the court where guilt is established by plea of guilty or nolo
33 contendere or by trial by the court sitting without a jury. Any
34 person who violates this section shall be subject to appropriate
35 orders of restitution .

36 (f) Any person who violates paragraph (3) of subdivision (a)
37 and who has two prior felony convictions for a violation of
38 paragraph (3) of subdivision (a) shall receive a five-year
39 enhancement in addition to the sentence provided in subdivision
40 (c). The existence of any fact that would subject a person to a

1 penalty enhancement shall be alleged in the information or
2 indictment and either admitted by the defendant in open court, or
3 found to be true by the jury trying the issue of guilt or by the court
4 where guilt is established by plea of guilty or nolo contendere or
5 by trial by the court sitting without a jury.

6 (g) Except as otherwise provided in Section 12022.7, any
7 person who violates paragraph (3) of subdivision (a) shall receive
8 a two-year enhancement for each person other than an accomplice
9 who suffers serious bodily injury resulting from the vehicular
10 collision or accident in a violation of paragraph (3) of subdivision
11 (a).

12 (h) This section shall not be construed to preclude the
13 applicability of any other provision of criminal law or equitable
14 remedy that applies or may apply to any act committed or alleged
15 to have been committed by a person.

16 (i) Any fine imposed pursuant to this section shall be doubled
17 if the offense was committed in connection with any claim
18 pursuant to any automobile insurance policy in an auto insurance
19 fraud crisis area designated by the Insurance Commissioner
20 pursuant to Article 4.6 (commencing with Section 1874.90) of
21 Chapter 12 of Part 2 of Division 1 of the Insurance Code.

22 SEC. 14. Section 1202.4 of the Penal Code is amended to
23 read:

24 1202.4. (a) It is the intent of the Legislature that, as provided
25 for in Section 28 of Article I of the California Constitution, a
26 victim of crime who incurs any economic loss as a result of the
27 commission of a crime shall receive restitution directly from any
28 defendant convicted of that crime. To this end, the court, in
29 addition to any other penalty permitted or required to be imposed
30 under the law, shall order the defendant to make all applicable
31 restitution and restitution fine payments as provided for in Title 8.5
32 (commencing with Section 1230).

33 (b) Upon a person being convicted of any crime in the State of
34 California, the court shall order the defendant to pay a fine in the
35 form of a penalty assessment in accordance with Section 1464.

36 SEC. 15. Section 1202.42 of the Penal Code is repealed.

37 SEC. 16. Section 1202.43 of the Penal Code is repealed.

38 SEC. 17. Section 1202.45 of the Penal Code is repealed.

39 SEC. 18. Section 1202.46 of the Penal Code is repealed.

40 SEC. 19. Section 1203 of the Penal Code is amended to read:

1 1203. (a) As used in this code, “probation” means the
2 suspension of the imposition or execution of a sentence and the
3 order of conditional and revocable release in the community under
4 the supervision of a probation officer. As used in this code,
5 “conditional sentence” means the suspension of the imposition or
6 execution of a sentence and the order of revocable release in the
7 community subject to conditions established by the court without
8 the supervision of a probation officer. It is the intent of the
9 Legislature that both conditional sentence and probation are
10 authorized whenever probation is authorized in any code as a
11 sentencing option for infractions or misdemeanors.

12 (b) (1) Except as provided in subdivision (j), if a person is
13 convicted of a felony and is eligible for probation, before judgment
14 is pronounced, the court shall immediately refer the matter to a
15 probation officer to investigate and report to the court, at a
16 specified time, upon the circumstances surrounding the crime and
17 the prior history and record of the person, which may be
18 considered either in aggravation or mitigation of the punishment.

19 (2) (A) The probation officer shall immediately investigate
20 and make a written report to the court of his or her findings and
21 recommendations, including his or her recommendations as to the
22 granting or denying of probation and the conditions of probation,
23 if granted.

24 (B) Pursuant to Section 828 of the Welfare and Institutions
25 Code, the probation officer shall include in his or her report any
26 information gathered by a law enforcement agency relating to the
27 taking of the defendant into custody as a minor, which shall be
28 considered for purposes of determining whether adjudications of
29 commissions of crimes as a juvenile warrant a finding that there
30 are circumstances in aggravation pursuant to Section 1170 or to
31 deny probation.

32 (C) The probation officer shall also include in the report his or
33 her recommendation of both of the following:

34 (i) The amount the defendant should be required to pay as a
35 restitution fine pursuant to Section 1233.

36 (ii) Whether the court shall require, as a condition of probation,
37 restitution or a restitution fine pursuant to Title 8.5 (commencing
38 with Section 1230) and the amount thereof.

39 (D) The report shall be made available to the court and the
40 prosecuting and defense attorneys at least five days, or upon

request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court.

(3) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(4) The preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that there shall be no waiver unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For

1 this purpose, upon the request of the person, the court shall grant
2 a continuance before the judgment is pronounced.

3 (e) Except in unusual cases where the interests of justice would
4 best be served if the person is granted probation, probation shall
5 not be granted to any of the following persons:

6 (1) Unless the person had a lawful right to carry a deadly
7 weapon, other than a firearm, at the time of the perpetration of the
8 crime or his or her arrest, any person who has been convicted of
9 arson, robbery, carjacking, burglary, burglary with explosives,
10 rape with force or violence, torture, aggravated mayhem, murder,
11 attempt to commit murder, trainwrecking, kidnapping, escape
12 from the state prison, or a conspiracy to commit one or more of
13 those crimes and who was armed with the weapon at either of those
14 times.

15 (2) Any person who used, or attempted to use, a deadly weapon
16 upon a human being in connection with the perpetration of the
17 crime of which he or she has been convicted.

18 (3) Any person who willfully inflicted great bodily injury or
19 torture in the perpetration of the crime of which he or she has been
20 convicted.

21 (4) Any person who has been previously convicted twice in this
22 state of a felony or in any other place of a public offense which,
23 if committed in this state, would have been punishable as a felony.

24 (5) Unless the person has never been previously convicted once
25 in this state of a felony or in any other place of a public offense
26 which, if committed in this state, would have been punishable as
27 a felony, any person who has been convicted of burglary with
28 explosives, rape with force or violence, torture, aggravated
29 mayhem, murder, attempt to commit murder, trainwrecking,
30 extortion, kidnapping, escape from the state prison, a violation of
31 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one
32 or more of those crimes.

33 (6) Any person who has been previously convicted once in this
34 state of a felony or in any other place of a public offense which,
35 if committed in this state, would have been punishable as a felony,
36 if he or she committed any of the following acts:

37 (A) Unless the person had a lawful right to carry a deadly
38 weapon at the time of the perpetration of the previous crime or his
39 or her arrest for the previous crime, he or she was armed with a
40 weapon at either of those times.

1 (B) The person used, or attempted to use, a deadly weapon
2 upon a human being in connection with the perpetration of the
3 previous crime.

4 (C) The person willfully inflicted great bodily injury or torture
5 in the perpetration of the previous crime.

6 (7) Any public official or peace officer of this state or any city,
7 county, or other political subdivision who, in the discharge of the
8 duties of his or her public office or employment, accepted or gave
9 or offered to accept or give any bribe, embezzled public money, or
10 was guilty of extortion.

11 (8) Any person who knowingly furnishes or gives away
12 phencyclidine.

13 (9) Any person who intentionally inflicted great bodily injury
14 in the commission of arson under subdivision (a) of Section 451
15 or who intentionally set fire to, burned, or caused the burning of,
16 an inhabited structure or inhabited property in violation of
17 subdivision (b) of Section 451.

18 (10) Any person who, in the commission of a felony, inflicts
19 great bodily injury or causes the death of a human being by the
20 discharge of a firearm from or at an occupied motor vehicle
21 proceeding on a public street or highway.

22 (11) Any person who possesses a short-barreled rifle or a
23 short-barreled shotgun under Section 12020, a machine gun under
24 Section 12220, or a silencer under Section 12520.

25 (12) Any person who is convicted of violating Section 8101 of
26 the Welfare and Institutions Code.

27 (13) Any person who is described in paragraph (2) or (3) of
28 subdivision (g) of Section 12072.

29 (f) When probation is granted in a case which comes within
30 subdivision (e), the court shall specify on the record and shall enter
31 on the minutes the circumstances indicating that the interests of
32 justice would best be served by that disposition.

33 (g) If a person is not eligible for probation, the judge shall refer
34 the matter to the probation officer for an investigation of the facts
35 relevant to determination of the amount of a restitution fine
36 pursuant to Section 1233. The judge, in his or her discretion, may
37 direct the probation officer to investigate all facts relevant to the
38 sentencing of the person. Upon that referral, the probation officer
39 shall immediately investigate the circumstances surrounding the
40 crime and the prior record and history of the person and make a

1 written report to the court of his or her findings. The findings shall
2 include a recommendation of the amount of the restitution fine as
3 provided in Section 1233.

4 (h) If a defendant is convicted of a felony and a probation report
5 is prepared pursuant to subdivision (b) or (g), the probation officer
6 may obtain and include in the report a statement of the comments
7 of the victim concerning the offense. The court may direct the
8 probation officer not to obtain a statement if the victim has in fact
9 testified at any of the court proceedings concerning the offense.

10 (i) No probationer shall be released to enter another state unless
11 his or her case has been referred to the Administrator of the
12 Interstate Probation and Parole Compacts, pursuant to the
13 Uniform Act for Out-of-State Probationer or Parolee Supervision
14 (Article 3 (commencing with Section 11175) of Chapter 2 of Title
15 1 of Part 4) and the probationer has reimbursed the county that has
16 jurisdiction over his or her probation case the reasonable costs of
17 processing his or her request for interstate compact supervision.
18 The amount and method of reimbursement shall be in accordance
19 with Section 1203.1b.

20 (j) In any court where a county financial evaluation officer is
21 available, in addition to referring the matter to the probation
22 officer, the court may order the defendant to appear before the
23 county financial evaluation officer for a financial evaluation of the
24 defendant's ability to pay restitution, in which case the county
25 financial evaluation officer shall report his or her findings
26 regarding restitution and other court-related costs to the probation
27 officer on the question of the defendant's ability to pay those costs.

28 Any order made to pay restitution or other costs may be
29 enforced as a violation of the terms and conditions of probation
30 upon willful failure to pay, and may be enforced as provided in
31 Title 8.5 (commencing with Section 1230).

32 (k) Probation shall not be granted to, nor shall the execution of,
33 or imposition of sentence be suspended for, any person who is
34 convicted of a violent felony, as defined in subdivision (c) of
35 Section 667.5, or a serious felony, as defined in subdivision (c) of
36 Section 1192.7, and who was on probation for a felony offense at
37 the time of the commission of the new felony offense.

38 SEC. 20. Section 1203.044 of the Penal Code is amended to
39 read:

1 1203.044. (a) This section shall apply only to a defendant
2 convicted of a felony for theft of an amount exceeding fifty
3 thousand dollars (\$50,000) in a single transaction or occurrence.
4 This section shall not apply unless the fact that the crime involved
5 the theft of an amount exceeding fifty thousand dollars (\$50,000)
6 in a single transaction or occurrence is charged in the accusatory
7 pleading and either admitted by the defendant in open court or
8 found to be true by the trier of fact. Aggregate losses from more
9 than one criminal act shall not be considered in determining if this
10 section applies.

11 (b) Notwithstanding any other law, probation shall not be
12 granted to a defendant convicted of a crime to which subdivision
13 (a) applies if the defendant was previously convicted of an offense
14 for which an enhancement pursuant to Section 12022.6 was found
15 true even if that enhancement was not imposed by the sentencing
16 court. The prior conviction shall be alleged in the accusatory
17 pleading and either admitted by the defendant in open court or
18 found to be true by the trier of fact.

19 (c) In deciding whether to grant probation to a defendant
20 convicted of a crime to which subdivision (a) applies, the court
21 shall consider all relevant information, including the extent to
22 which the defendant has attempted to pay restitution to the victim
23 between the date upon which the defendant was convicted and the
24 date of sentencing. A defendant claiming inability to pay
25 restitution before the date of sentencing shall provide a statement
26 of assets, income, and liabilities, as set forth in subdivision (j) to
27 the court, the probation department, and the prosecution.

28 (d) In addition to the restrictions on probation imposed by
29 subdivisions (b) and (c), probation shall not be granted to any
30 person convicted of theft in an amount exceeding one hundred
31 thousand dollars (\$100,000) in a single transaction or occurrence,
32 except in unusual cases if the interests of justice would best be
33 served if the person is granted probation. The fact that the theft was
34 of an amount exceeding one hundred thousand dollars (\$100,000)
35 in a single transaction or occurrence, shall be alleged in the
36 accusatory pleading and either admitted by the defendant in open
37 court or found to be true by the trier of fact. This subdivision shall
38 not authorize a grant of probation otherwise prohibited under
39 subdivision (b) or (c). If probation is granted pursuant to this
40 subdivision, the court shall specify on the record and shall enter on



1 the minutes the circumstances indicating that the interests of
2 justice would best be served by that disposition. Aggregate losses
3 from more than one criminal act shall not be considered in
4 determining whether this subdivision applies.

5 (e) Subject to subdivision (f), if a defendant is convicted of a
6 crime to which subdivision (a) applies and the court grants
7 probation, a court shall impose at least a 90-day sentence in a
8 county jail as a condition of probation. If the defendant was
9 convicted of a crime to which subdivision (d) applies, and the court
10 grants probation, the court shall impose at least a 180-day sentence
11 in a county jail as a condition of probation.

12 (f) The court shall designate a portion of any sentence imposed
13 pursuant to subdivision (e) as a mandatory in-custody term. For the
14 purpose of this section only, “mandatory in-custody term” means
15 that the defendant shall serve that term, notwithstanding credits
16 pursuant to Section 4019, in custody in a county jail. The
17 defendant shall not be allowed release on any program during that
18 term, including work furlough, work release, public service
19 program, or electronic monitoring. The court shall designate the
20 mandatory in-custody term as follows:

21 (1) If the defendant was convicted of a crime to which
22 subdivision (a) applies, the mandatory in-custody term shall be no
23 less than 30 days. If the person serves a mandatory in-custody term
24 of at least 30 days, the court may, in the interests of justice, and for
25 reasons stated in the record, reduce the mandatory minimum
26 90-day sentence required by subdivision (e).

27 (2) If the defendant was convicted of a crime to which
28 subdivision (d) applies, the mandatory in-custody term shall be no
29 less than 60 days. If the person serves a mandatory in-custody term
30 of at least 60 days, the court may, in the interests of justice, and for
31 reasons stated in the record, reduce the mandatory minimum
32 180-day sentence required by subdivision (e).

33 (g) If a defendant is convicted of a crime to which subdivision
34 (a) applies, and the court grants probation, the court shall require
35 the defendant as a condition of probation to pay restitution to the
36 victim and to pay a surcharge to the county in the amount of 20
37 percent of the restitution ordered by the court, as follows:

38 (1) The surcharge is not subject to any assessments otherwise
39 imposed by Section 1464. The surcharge shall be paid into the
40 county treasury and placed in the general fund to be used

1 exclusively for the investigation and prosecution of white collar
2 crime offenses and to pay the expenses incurred by the county in
3 administering this section, including increased costs incurred as a
4 result of offenders serving mandatory in-custody terms pursuant
5 to this section.

6 (2) The court shall also enter an income deduction order as
7 provided in Section 1234.5 to secure payment of the surcharge.
8 That order may be enforced to secure payment of the surcharge as
9 provided by those provisions.

10 (3) The county board of supervisors shall not charge the fee
11 provided for by Section 1231.8 or 1233.3 for the collection of
12 restitution or any restitution fine.

13 (4) The defendant shall not be required to pay the costs of
14 probation as otherwise required by subdivision (b) of Section
15 1203.1.

16 (h) Notwithstanding any other law, if a defendant is convicted
17 of a crime to which subdivision (a) applies and the court grants
18 probation, as a condition of probation, within 30 court days after
19 being granted probation, and annually thereafter, the defendant
20 shall provide the county financial officer with all of the following
21 documents and records:

22 (1) True and correct copies of all income tax and personal
23 property tax returns for the previous tax year, including W-2 forms
24 filed on the defendant's behalf with any state tax agency. If the
25 defendant is unable to supply a copy of a state tax return, the
26 defendant shall provide a true and correct copy of all income tax
27 returns for the previous tax year filed on his or her behalf with the
28 federal government. The defendant is not required to provide any
29 particular document if to do so would violate federal law or the law
30 of the state in which the document was filed. However, this section
31 shall supersede all other laws in this state concerning the right to
32 privacy with respect to tax returns filed with this state. If, during
33 the term of probation, the defendant intentionally fails to provide
34 the county financial officer with any document that he or she
35 knows is required to be provided under this subdivision, that
36 failure shall constitute a violation of probation.

37 (2) A statement of income, assets, and liabilities as defined in
38 subdivision (j).

39 (i) The submission by the defendant of any tax document
40 pursuant to paragraph (1) of subdivision (h) that the defendant

1 knows does not accurately state the defendant's income, or if
2 required, the defendant's personal property, if the inaccuracy is
3 material, constitutes a violation of probation.

4 (j) A statement of income, assets, and liabilities form, that is
5 consistent with the disclosure requirements of this section, may be
6 established by the financial officer of each county. That statement
7 shall require the defendant to furnish relevant financial
8 information identifying the defendant's income, assets,
9 possessions, or liabilities, actual or contingent. The statement may
10 include the following:

11 (1) All real property in which the defendant has any interest.

12 (2) Any item of personal property worth more than three
13 thousand dollars (\$3,000) in which the defendant has any interest,
14 including, but not limited to, vehicles, airplanes, boats, computers,
15 and consumer electronics. Any collection of jewelry, coins, silver,
16 china, artwork, antiques, or other collectibles in which the
17 defendant has any interest, if that collection is worth more than
18 three thousand dollars (\$3,000).

19 (3) All domestic and foreign assets in the defendant's name, or
20 in the name of the defendant's spouse or minor children, of a value
21 over three thousand dollars (\$3,000) and in whatever form,
22 including, but not limited to, bank accounts, securities, stock
23 options, bonds, mutual funds, money market funds, certificates of
24 deposits, annuities, commodities, precious metals, deferred
25 compensation accounts, individual retirement accounts, and
26 related or analogous accounts.

27 (4) All insurance policies in which the defendant or the
28 defendant's spouse or minor children retain a cash value.

29 (5) All pension funds in which the defendant has a vested right.

30 (6) All insurance policies of which the defendant is a
31 beneficiary.

32 (7) All contracts, agreements, judgments, awards, or prizes
33 granting the defendant the right to receive money or real or
34 personal property in the future, including alimony and child
35 support.

36 (8) All trusts of which the defendant is a beneficiary.

37 (9) All unrevoked wills of a decedent if the defendant or
38 defendant's spouse or minor child is a beneficiary.

1 (10) All lawsuits currently maintained by the defendant or by
2 or against a corporation in which the defendant owns more than a
3 25-percent interest if the suit includes a prayer for damages.

4 (11) All corporations of which the defendant is an officer. If the
5 defendant is an officer in a corporation sole, subchapter S
6 corporation, or closely held corporation, and controls more equity
7 of that corporation than any other individual, the county financial
8 officer shall have authority to request other records of the
9 corporation.

10 (12) All debts in excess of three thousand dollars (\$3,000)
11 owed by the defendant to any person or entity.

12 (13) Copies of all applications for loans made by the defendant
13 during the last year.

14 (14) All encumbrances on any real and personal property in
15 which the defendant has any interest.

16 (15) All sales, transfers, assignments, quitclaims,
17 conveyances, or encumbrances of any interest in real or personal
18 property of a value exceeding three thousand dollars (\$3,000)
19 made by the defendant during the period beginning one year before
20 charges were filed to the present, including the identity of the
21 recipient of same, and relationship, if any, to the defendant.

22 (k) The information contained in the statement of income,
23 assets, and liabilities shall not be available to the public.
24 Information received pursuant to this subdivision shall not be
25 disclosed to any member of the public. Any disclosure in violation
26 of this section shall be a contempt of court punishable by a fine not
27 exceeding one thousand dollars (\$1,000), and shall also create a
28 civil cause of action for damages.

29 (l) After providing the statement of income, assets, and
30 liabilities, the defendant shall provide the county financial officer
31 with copies of any documents representing or reflecting the
32 financial information set forth in subdivision (j) as requested by
33 that officer.

34 (m) The defendant shall sign the statement of income, assets,
35 and liabilities under penalty of perjury. The provision of
36 information known to be false, or the intentional failure to provide
37 material information knowing that it was required to have been
38 provided, shall constitute a violation of probation.

39 (n) The Franchise Tax Board and the Employment
40 Development Department shall release copies of income tax

1 returns filed by the defendant and other information concerning
2 the defendant's current income and place of employment to the
3 county financial officer upon request. That information shall be
4 kept confidential and shall not be made available to any member
5 of the public. Any unauthorized release shall be subject to
6 subdivision (k). The county shall reimburse the reasonable
7 administrative expenses incurred by those agencies in providing
8 this information.

9 (o) During the term of probation, the defendant shall notify the
10 county financial officer in writing within 30 days, after receipt
11 from any source of any money or real or personal property that has
12 a value of over five thousand dollars (\$5,000), apart from the
13 salary from the defendant's and the defendant's spouse's regular
14 employment. The defendant shall report the source and value of
15 the money or real or personal property received. This information
16 shall not be made available to the public or the victim. Any
17 unauthorized release shall be subject to subdivision (k).

18 (p) The term of probation in all cases shall be 10 years.
19 However, after the defendant has served five years of probation,
20 the defendant shall be released from all terms and conditions of
21 probation except those terms and conditions included within this
22 section. A court may not revoke or otherwise terminate probation
23 within 10 years unless and until the defendant has satisfied both the
24 restitution judgment and the surcharge, or the defendant is
25 imprisoned for a violation of probation. Upon satisfying the
26 restitution judgment, the defendant is entitled to a court order
27 vacating that judgment and removing it from the public record.
28 Amounts owing on the surcharge are forgiven upon completion of
29 the term of probation.

30 (q) The county financial officer shall establish a suggested
31 payment schedule each year to ensure that the defendant remits
32 amounts to make restitution to the victim and pay the surcharge.
33 The county financial officer shall evaluate the defendant's current
34 earnings, future earning capacity, assets (including assets that are
35 in trust or in accounts where penalties may be incurred upon
36 premature withdrawal of funds), and liabilities, and set payments
37 to the county based upon the defendant's ability to pay. The
38 defendant shall bear the burden of demonstrating the lack of his or
39 her ability to pay. If the defendant objects to the suggested payment
40 schedule, the court shall set the schedule. Express findings by the



1 court as to the factors bearing on the payment schedule shall not
2 be required. After the payment schedule is set, a defendant may
3 request a change in the schedule upon a change of circumstances.
4 The restitution schedule shall set a reasonable payment amount
5 and shall not set payments in an amount that is likely to cause
6 severe financial hardship to the defendant or his or her family.

7 (r) The willful failure to pay the amounts required by the
8 payment schedule or to comply with the requirements of the
9 county financial officer or the probation department pursuant to
10 this section, if the defendant is able to pay or comply, is a violation
11 of probation.

12 (s) In determining the defendant's ability to pay, the court shall
13 consider whether the annual payment required, including any
14 money or property seized to satisfy the restitution judgment,
15 exceeds 15 percent of the defendant's taxable income for the
16 previous year as identified on the defendant's tax return for the
17 defendant's state of residence or on the defendant's federal tax
18 return. If the defendant has filed a joint return, the defendant's
19 income for purposes of this section shall be presumed to be the
20 total of all wages earned by the defendant, plus one-half of all other
21 nonsalary income listed on the tax return and accompanying
22 schedules, unless the defendant demonstrates otherwise. The court
23 shall also consider the defendant's current income and future
24 earning capacity. A defendant shall bear the burden of
25 demonstrating lack of his or her ability to pay. Express findings by
26 the court as to the factors bearing on the payment schedule shall
27 not be required.

28 (t) The defendant shall personally appear at any hearing held
29 pursuant to any provision of this section unless the defendant is
30 incarcerated or otherwise excused by the court, in which case the
31 defendant may appear through counsel.

32 (u) Notwithstanding subdivision (d) of Section 1203.1, the
33 county financial officer shall distribute proceeds collected by the
34 county pursuant to this section as follows:

35 (1) If the restitution judgment has been satisfied, but the
36 surcharge remains outstanding, all amounts paid by the defendant
37 shall be kept by the county and applied to the surcharge.

38 (2) If the surcharge has been satisfied, but the restitution
39 judgment has not been satisfied, all amounts submitted to the
40 county shall be remitted to the victim.

1 (3) If neither judgment has been satisfied, the county shall
2 remit 70 percent of the amounts collected to the victim. Those
3 amounts shall be credited to the restitution judgment. The
4 remaining 30 percent shall be retained by the county and credited
5 toward the surcharge.

6 (v) Neither this section, nor the amendments to Section
7 12022.6 of the Penal Code enacted pursuant to Chapter 104 of the
8 Statutes of 1992, are intended to lessen or otherwise mitigate
9 sentences that could otherwise be imposed under any law in effect
10 when the offense was committed.

11 (w) For the purpose of this section, a county may designate an
12 appropriate employee of the county probation department, the
13 department of revenue, or any other analogous county department
14 to act as the county financial officer pursuant to this section.

15 (x) This section shall remain in effect only until January 1,
16 2008, and as of that date is repealed, unless a later enacted statute,
17 which is enacted before January 1, 2008, deletes or extends that
18 date.

19 (y) This act shall be known as the Economic Crime Act of
20 1992.

21 ~~SEC. 21.—Section 1203.097 of the Penal Code is amended to~~
22 ~~read:~~

23 ~~1203.097.—(a) If a person is granted probation for a crime in~~
24 ~~which the victim is a person defined in Section 6211 of the Family~~
25 ~~Code, the terms of probation shall include all of the following:~~

26 ~~(1) A minimum period of probation of 36 months, which may~~
27 ~~include a period of summary probation as appropriate.~~

28 ~~(2) A criminal court protective order protecting the victim from~~
29 ~~further acts of violence, threats, stalking, sexual abuse, and~~
30 ~~harassment, and, if appropriate, containing residence exclusion or~~
31 ~~stay-away conditions.~~

32 ~~(3) Notice to the victim of the disposition of the case.~~

33 ~~(4) Booking the defendant within one week of sentencing if the~~
34 ~~defendant has not already been booked.~~

35 ~~(5) A minimum payment by the defendant of two hundred~~
36 ~~dollars (\$200) to be disbursed as specified in this paragraph. If,~~
37 ~~after a hearing in court on the record, the court finds that the~~
38 ~~defendant does not have the ability to pay, the court may reduce or~~
39 ~~waive this fee.~~

~~One-third of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to two-thirds of funds collected during the preceeding month. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:~~

~~(A) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order data bank system.~~

~~(B) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.~~

~~(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence~~

1 for good cause by the program for no more than three individual
2 sessions during the entire program, and shall complete the
3 program within 18 months, unless, after a hearing, the court finds
4 good cause to modify the requirements of consecutive attendance
5 or completion within 18 months.

6 (7) (A) (i) The court shall order the defendant to comply with
7 all probation requirements, including the requirements to attend
8 counseling, keep all program appointments, and pay program fees
9 based upon the ability to pay.

10 (ii) The terms of probation for offenders shall not be lifted until
11 all reasonable fees due to the counseling program have been paid
12 in full, but in no case shall probation be extended beyond the term
13 provided in subdivision (a) of Section 1203.1. If the court finds
14 that the defendant does not have the ability to pay the fees based
15 on the defendant's changed circumstances, the court may reduce
16 or waive the fees.

17 (B) Upon request by the batterer's program, the court shall
18 provide the defendant's arrest report, prior incidents of violence,
19 and treatment history to the program.

20 (8) The court also shall order the defendant to perform a
21 specified amount of appropriate community service, as designated
22 by the court. The defendant shall present the court with proof of
23 completion of community service and the court shall determine if
24 the community service has been satisfactorily completed. If
25 sufficient staff and resources are available, the community service
26 shall be performed under the jurisdiction of the local agency
27 overseeing a community service program.

28 (9) If the program finds that the defendant is unsuitable, the
29 program shall immediately contact the probation department or
30 the court. The probation department or court shall either
31 recalendar the case for hearing or refer the defendant to an
32 appropriate alternative batterer's program.

33 (10) (A) Upon recommendation of the program, a court shall
34 require a defendant to participate in additional sessions throughout
35 the probationary period, unless it finds that it is not in the interests
36 of justice to do so, states its reasons on the record, and enters them
37 into the minutes. In deciding whether the defendant would benefit
38 from more sessions, the court shall consider whether any of the
39 following conditions exist:

- 1 ~~(i) The defendant has been violence free for a minimum of six~~
2 ~~months.~~
- 3 ~~(ii) The defendant has cooperated and participated in the~~
4 ~~batterer's program.~~
- 5 ~~(iii) The defendant demonstrates an understanding of and~~
6 ~~practices positive conflict resolution skills.~~
- 7 ~~(iv) The defendant blames, degrades, or has committed acts~~
8 ~~that dehumanize the victim or puts at risk the victim's safety,~~
9 ~~including, but not limited to, molesting, stalking, striking,~~
10 ~~attacking, threatening, sexually assaulting, or battering the victim.~~
- 11 ~~(v) The defendant demonstrates an understanding that the use~~
12 ~~of coercion or violent behavior to maintain dominance is~~
13 ~~unacceptable in an intimate relationship.~~
- 14 ~~(vi) The defendant has made threats to harm anyone in any~~
15 ~~manner.~~
- 16 ~~(vii) The defendant has complied with applicable requirements~~
17 ~~under paragraph (6) of subdivision (c) or subparagraph (C) to~~
18 ~~receive alcohol counseling, drug counseling, or both.~~
- 19 ~~(viii) The defendant demonstrates acceptance of responsibility~~
20 ~~for the abusive behavior perpetrated against the victim.~~
- 21 ~~(B) The program shall immediately report any violation of the~~
22 ~~terms of the protective order, including any new acts of violence~~
23 ~~or failure to comply with the program requirements, to the court,~~
24 ~~the prosecutor, and, if formal probation has been ordered, to the~~
25 ~~probation department. The probationer shall file proof of~~
26 ~~enrollment in a batterer's program with the court within 30 days~~
27 ~~of conviction.~~
- 28 ~~(C) Concurrent with other requirements under this section, in~~
29 ~~addition to, and not in lieu of, the batterer's program, and unless~~
30 ~~prohibited by the referring court, the probation department or the~~
31 ~~court may make provisions for a defendant to use his or her~~
32 ~~resources to enroll in a chemical dependency program or to enter~~
33 ~~voluntarily a licensed chemical dependency recovery hospital or~~
34 ~~residential treatment program that has a valid license issued by the~~
35 ~~state to provide alcohol or drug services to receive program~~
36 ~~participation credit, as determined by the court. The probation~~
37 ~~department shall document evidence of this hospital or residential~~
38 ~~treatment participation in the defendant's program file.~~

1 ~~(11) The conditions of probation may include, in lieu of a fine,~~
2 ~~but not in lieu of the fund payment required under paragraph (5),~~
3 ~~one or more of the following requirements:~~

4 ~~(A) That the defendant make payments to a battered women's~~
5 ~~shelter, up to a maximum of five thousand dollars (\$5,000).~~

6 ~~(B) That the defendant reimburse the victim for reasonable~~
7 ~~expenses that the court finds are the direct result of the defendant's~~
8 ~~offense.~~

9 ~~For any order to pay a fine, to make payments to a battered~~
10 ~~women's shelter, or to pay restitution as a condition of probation~~
11 ~~under this subdivision, the court shall make a determination of the~~
12 ~~defendant's ability to pay. Determination of a defendant's ability~~
13 ~~to pay may include his or her future earning capacity. A defendant~~
14 ~~shall bear the burden of demonstrating lack of his or her ability to~~
15 ~~pay. Express findings by the court as to the factors bearing on the~~
16 ~~amount of the fine shall not be required. In no event shall any order~~
17 ~~to make payments to a battered women's shelter be made if it~~
18 ~~would impair the ability of the defendant to pay direct restitution~~
19 ~~to the victim or court-ordered child support. When the injury to a~~
20 ~~married person is caused in whole or in part by the criminal acts~~
21 ~~of his or her spouse in violation of this section, the community~~
22 ~~property shall not be used to discharge the liability of the offending~~
23 ~~spouse for restitution to the injured spouse, as required by Section~~
24 ~~1231, or to a shelter for costs with regard to the injured spouse,~~
25 ~~until all separate property of the offending spouse is exhausted.~~

26 ~~(12) If it appears to the prosecuting attorney, the court, or the~~
27 ~~probation department that the defendant is performing~~
28 ~~unsatisfactorily in the assigned program, is not benefiting from~~
29 ~~counseling, or has engaged in criminal conduct, upon request of~~
30 ~~the probation officer, the prosecuting attorney, or on its own~~
31 ~~motion, the court, as a priority calendar item, shall hold a hearing~~
32 ~~to determine whether further sentencing should proceed. The court~~
33 ~~may consider factors, including, but not limited to, any violence~~
34 ~~by the defendant against the former or a new victim while on~~
35 ~~probation and noncompliance with any other specific condition of~~
36 ~~probation. If the court finds that the defendant is not performing~~
37 ~~satisfactorily in the assigned program, is not benefiting from the~~
38 ~~program, has not complied with a condition of probation, or has~~
39 ~~engaged in criminal conduct, the court shall terminate the~~

1 defendant's participation in the program and shall proceed with
2 further sentencing.

3 (b) If a person is granted formal probation for a crime in which
4 the victim is a person defined in Section 6211 of the Family Code,
5 in addition to the terms specified in subdivision (a), all of the
6 following shall apply:

7 (1) The probation department shall make an investigation and
8 take into consideration the defendant's age, medical history,
9 employment and service records, educational background,
10 community and family ties, prior incidents of violence, police
11 report, treatment history, if any, demonstrable motivation, and
12 other mitigating factors in determining which batterer's program
13 would be appropriate for the defendant. This information shall be
14 provided to the batterer's program if it is requested. The probation
15 department shall also determine which community programs the
16 defendant would benefit from and which of those programs would
17 accept the defendant. The probation department shall report its
18 findings and recommendations to the court.

19 (2) The court shall advise the defendant that the failure to report
20 to the probation department for the initial investigation, as directed
21 by the court, or the failure to enroll in a specified program, as
22 directed by the court or the probation department, shall result in
23 possible further incarceration. The court, in the interests of justice,
24 may relieve the defendant from the prohibition set forth in this
25 subdivision based upon the defendant's mistake or excusable
26 neglect. Application for this relief shall be filed within 20 court
27 days of the missed deadline. This time limitation may not be
28 extended. A copy of any application for relief shall be served on
29 the office of the prosecuting attorney.

30 (3) After the court orders the defendant to a batterer's program,
31 the probation department shall conduct an initial assessment of the
32 defendant, including, but not limited to, all of the following:

33 (A) Social, economic, and family background.

34 (B) Education.

35 (C) Vocational achievements.

36 (D) Criminal history.

37 (E) Medical history.

38 (F) Substance abuse history.

39 (G) Consultation with the probation officer.

1 ~~(H) Verbal consultation with the victim, only if the victim~~
2 ~~desires to participate.~~

3 ~~(I) Assessment of the future probability of the defendant~~
4 ~~committing murder.~~

5 ~~(4) The probation department shall attempt to notify the victim~~
6 ~~regarding the requirements for the defendant's participation in the~~
7 ~~batterer's program, as well as regarding available victim~~
8 ~~resources. The victim also shall be informed that attendance in any~~
9 ~~program does not guarantee that an abuser will not be violent.~~

10 ~~(e) The court or the probation department shall refer~~
11 ~~defendants only to batterer's programs that follow standards~~
12 ~~outlined in paragraph (1), which may include, but are not limited~~
13 ~~to, lectures, classes, group discussions, and counseling. The~~
14 ~~probation department shall design and implement an approval and~~
15 ~~renewal process for batterer's programs and shall solicit input~~
16 ~~from criminal justice agencies and domestic violence victim~~
17 ~~advocacy programs.~~

18 ~~(1) The goal of a batterer's program under this section shall be~~
19 ~~to stop domestic violence. A batterer's program shall consist of the~~
20 ~~following components:~~

21 ~~(A) Strategies to hold the defendant accountable for the~~
22 ~~violence in a relationship, including, but not limited to, providing~~
23 ~~the defendant with a written statement that the defendant shall be~~
24 ~~held accountable for acts or threats of domestic violence.~~

25 ~~(B) A requirement that the defendant participate in ongoing~~
26 ~~same gender group sessions.~~

27 ~~(C) An initial intake that provides written definitions to the~~
28 ~~defendant of physical, emotional, sexual, economic, and verbal~~
29 ~~abuse, and the techniques for stopping these types of abuse.~~

30 ~~(D) Procedures to inform the victim regarding the~~
31 ~~requirements for the defendant's participation in the intervention~~
32 ~~program as well as regarding available victim resources. The~~
33 ~~victim also shall be informed that attendance in any program does~~
34 ~~not guarantee that an abuser will not be violent.~~

35 ~~(E) A requirement that the defendant attend group sessions free~~
36 ~~of chemical influence.~~

37 ~~(F) Educational programming that examines, at a minimum,~~
38 ~~gender roles, socialization, the nature of violence, the dynamics of~~
39 ~~power and control, and the effects of abuse on children and others.~~

1 ~~(G) A requirement that excludes any couple counseling or~~
2 ~~family counseling, or both.~~

3 ~~(H) Procedures that give the program the right to assess~~
4 ~~whether or not the defendant would benefit from the program and~~
5 ~~to refuse to enroll the defendant if it is determined that the~~
6 ~~defendant would not benefit from the program, so long as the~~
7 ~~refusal is not because of the defendant's inability to pay. If~~
8 ~~possible, the program shall suggest an appropriate alternative~~
9 ~~program.~~

10 ~~(I) Program staff who, to the extent possible, have specific~~
11 ~~knowledge regarding, but not limited to, spousal abuse, child~~
12 ~~abuse, sexual abuse, substance abuse, the dynamics of violence~~
13 ~~and abuse, the law, and procedures of the legal system.~~

14 ~~(J) Program staff who are encouraged to utilize the expertise,~~
15 ~~training, and assistance of local domestic violence centers.~~

16 ~~(K) A requirement that the defendant enter into a written~~
17 ~~agreement with the program, which shall include an outline of the~~
18 ~~contents of the program, the attendance requirements, the~~
19 ~~requirement to attend group sessions free of chemical influence,~~
20 ~~and a statement that the defendant may be removed from the~~
21 ~~program if it is determined that the defendant is not benefiting~~
22 ~~from the program or is disruptive to the program.~~

23 ~~(L) A requirement that the defendant sign a confidentiality~~
24 ~~statement prohibiting disclosure of any information obtained~~
25 ~~through participating in the program or during group sessions~~
26 ~~regarding other participants in the program.~~

27 ~~(M) Program content that provides cultural and ethnic~~
28 ~~sensitivity.~~

29 ~~(N) A requirement of a written referral from the court or~~
30 ~~probation department prior to permitting the defendant to enroll in~~
31 ~~the program. The written referral shall state the number of~~
32 ~~minimum sessions required by the court.~~

33 ~~(O) Procedures for submitting to the probation department all~~
34 ~~of the following uniform written responses:~~

35 ~~(i) Proof of enrollment, to be submitted to the court and the~~
36 ~~probation department and to include the fee determined to be~~
37 ~~charged to the defendant, based upon the ability to pay, for each~~
38 ~~session.~~

39 ~~(ii) Periodic progress reports that include attendance, fee~~
40 ~~payment history, and program compliance.~~

1 ~~(iii) Final evaluation that includes the program's evaluation of~~
2 ~~the defendant's progress, using the criteria set forth in paragraph~~
3 ~~(4) of subdivision (a) and recommendation for either successful or~~
4 ~~unsucessful termination or continuation in the program.~~

5 ~~(P) A sliding fee schedule based on the defendant's ability to~~
6 ~~pay. The batterer's program shall develop and utilize a sliding fee~~
7 ~~scale that recognizes both the defendant's ability to pay and the~~
8 ~~necessity of programs to meet overhead expenses. An indigent~~
9 ~~defendant may negotiate a deferred payment schedule, but shall~~
10 ~~pay a nominal fee, if the defendant has the ability to pay the~~
11 ~~nominal fee. Upon a hearing and a finding by the court that the~~
12 ~~defendant does not have the financial ability to pay the nominal~~
13 ~~fee, the court shall waive this fee. The payment of the fee shall be~~
14 ~~made a condition of probation if the court determines the~~
15 ~~defendant has the present ability to pay the fee. The fee shall be~~
16 ~~paid during the term of probation unless the program sets other~~
17 ~~conditions. The acceptance policies shall be in accordance with the~~
18 ~~sealed fee system.~~

19 ~~(2) The court shall refer persons only to batterer's programs~~
20 ~~that have been approved by the probation department pursuant to~~
21 ~~paragraph (5). The probation department shall do both of the~~
22 ~~following:~~

23 ~~(A) Provide for the issuance of a provisional approval,~~
24 ~~provided that the applicant is in substantial compliance with~~
25 ~~applicable laws and regulations and an urgent need for approval~~
26 ~~exists. A provisional approval shall be considered an authorization~~
27 ~~to provide services and shall not be considered a vested right.~~

28 ~~(B) If the probation department determines that a program is~~
29 ~~not in compliance with standards set by the department, the~~
30 ~~department shall provide written notice of the noncompliant areas~~
31 ~~to the program. The program shall submit a written plan of~~
32 ~~corrections within 14 days from the date of the written notice on~~
33 ~~noncompliance. A plan of correction shall include, but not be~~
34 ~~limited to, a description of each corrective action and timeframe~~
35 ~~for implementation. The department shall review and approve all~~
36 ~~or any part of the plan of correction and notify the program of~~
37 ~~approval or disapproval in writing. If the program fails to submit~~
38 ~~a plan of correction or fails to implement the approved plan of~~
39 ~~correction, the department shall consider whether to revoke or~~
40 ~~suspend approval and, upon revoking or suspending approval,~~

1 ~~shall have the option to cease referrals of defendants under this~~
2 ~~section.~~

3 ~~(3) No program, regardless of its source of funding, shall be~~
4 ~~approved unless it meets all of the following standards:~~

5 ~~(A) The establishment of guidelines and criteria for education~~
6 ~~services, including standards of services that may include lectures,~~
7 ~~classes, and group discussions.~~

8 ~~(B) Supervision of the defendant for the purpose of evaluating~~
9 ~~the person's progress in the program.~~

10 ~~(C) Adequate reporting requirements to ensure that all persons~~
11 ~~who, after being ordered to attend and complete a program, may~~
12 ~~be identified for either failure to enroll in, or failure to successfully~~
13 ~~complete, the program or for the successful completion of the~~
14 ~~program as ordered. The program shall notify the court and the~~
15 ~~probation department in writing within the period of time and in~~
16 ~~the manner specified by the court of any person who fails to~~
17 ~~complete the program. Notification shall be given if the program~~
18 ~~determines that the defendant is performing unsatisfactorily or if~~
19 ~~the defendant is not benefiting from the education, treatment, or~~
20 ~~counseling.~~

21 ~~(D) No victim shall be compelled to participate in a program or~~
22 ~~counseling, and no program may condition a defendant's~~
23 ~~enrollment on participation by the victim.~~

24 ~~(4) In making referrals of indigent defendants to approved~~
25 ~~batterer's programs, the probation department shall apportion~~
26 ~~these referrals evenly among the approved programs.~~

27 ~~(5) The probation department shall have the sole authority to~~
28 ~~approve a batterer's program for probation. The program shall be~~
29 ~~required to obtain only one approval but shall renew that approval~~
30 ~~annually.~~

31 ~~(A) The procedure for the approval of a new or existing~~
32 ~~program shall include all of the following:~~

33 ~~(i) The completion of a written application containing~~
34 ~~necessary and pertinent information describing the applicant~~
35 ~~program.~~

36 ~~(ii) The demonstration by the program that it possesses~~
37 ~~adequate administrative and operational capability to operate a~~
38 ~~batterer's treatment program. The program shall provide~~
39 ~~documentation to prove that the program has conducted batterer's~~
40 ~~programs for at least one year prior to application. This~~

1 requirement may be waived under subparagraph (A) of paragraph
2 (2) if there is no existing batterer's program in the city, county, or
3 city and county.

4 (iii) ~~The onsite review of the program, including monitoring of~~
5 ~~a session to determine that the program adheres to applicable~~
6 ~~statutes and regulations.~~

7 (iv) ~~The payment of the approval fee.~~

8 (B) ~~The probation department shall fix a fee for approval not~~
9 ~~to exceed two hundred fifty dollars (\$250) and for approval~~
10 ~~renewal not to exceed two hundred fifty dollars (\$250) every year~~
11 ~~in an amount sufficient to cover its cost in administering the~~
12 ~~approval process under this section. No fee shall be charged for the~~
13 ~~approval of local governmental entities.~~

14 (C) ~~The probation department has the sole authority to approve~~
15 ~~the issuance, denial, suspension, or revocation of approval and to~~
16 ~~cease new enrollments or referrals to a batterer's program under~~
17 ~~this section. The probation department shall review information~~
18 ~~relative to a program's performance or failure to adhere to~~
19 ~~standards, or both. The probation department may suspend or~~
20 ~~revoke any approval issued under this subdivision or deny an~~
21 ~~application to renew an approval or to modify the terms and~~
22 ~~conditions of approval, based on grounds established by~~
23 ~~probation, including, but not limited to, either of the following:~~

24 (i) ~~Violation of this section by any person holding approval or~~
25 ~~by a program employee in a program under this section.~~

26 (ii) ~~Misrepresentation of any material fact in obtaining the~~
27 ~~approval.~~

28 (6) ~~For defendants who are chronic users or serious abusers of~~
29 ~~drugs or alcohol, standard components in the program shall~~
30 ~~include concurrent counseling for substance abuse and violent~~
31 ~~behavior, and in appropriate cases, detoxification and abstinence~~
32 ~~from the abused substance.~~

33 (7) ~~The program shall conduct an exit conference that assesses~~
34 ~~the defendant's progress during his or her participation in the~~
35 ~~batterer's program.~~

36 SEC. 22. ~~Section 1203.1 of the Penal Code is amended to~~
37 ~~read:~~

38 1203.1. (a) ~~The court, or judge thereof, in the order granting~~
39 ~~probation, may suspend the imposing or the execution of the~~
40 ~~sentence and may direct that the suspension may continue for a~~

1 period of time not exceeding the maximum possible term of the
2 sentence, except as hereinafter set forth, and upon those terms and
3 conditions as it shall determine. The court, or judge thereof, in the
4 order granting probation and as a condition thereof, may imprison
5 the defendant in a county jail for a period not exceeding the
6 maximum time fixed by law in the case.

7 However, where the maximum possible term of the sentence is
8 five years or less, then the period of suspension of imposition or
9 execution of sentence may, in the discretion of the court, continue
10 for not over five years. The following shall apply to this
11 subdivision:

12 (1) The court may fine the defendant in a sum not to exceed the
13 maximum fine provided by law in the case.

14 (2) The court may, in connection with granting probation,
15 impose either imprisonment in a county jail or a fine, both, or
16 neither.

17 (3) The court shall provide for restitution in proper cases, as
18 provided in Title 8.5 (commencing with Section 1230):

19 (4) The court may require bonds for the faithful observance and
20 performance of any or all of the conditions of probation.

21 (b) The court shall consider whether the defendant as a
22 condition of probation shall make restitution to the victim or the
23 Restitution Fund. Any restitution payment received by a probation
24 department in the form of cash or money order shall be forwarded
25 to the victim within 30 days from the date the payment is received
26 by the department. Any restitution payment received by a
27 probation department in the form of a check or draft shall be
28 forwarded to the victim within 45 days from the date the payment
29 is received by the department, provided, that payment need not be
30 forwarded to a victim until 180 days from the date the first
31 payment is received, if the restitution payments for that victim
32 received by the probation department total less than fifty dollars
33 (\$50). In cases where the court has ordered the defendant to pay
34 restitution to multiple victims and where the administrative cost of
35 disbursing restitution payments to multiple victims involves a
36 significant cost, any restitution payment received by a probation
37 department shall be forwarded to multiple victims when it is
38 cost effective to do so, but in no event shall restitution
39 disbursements be delayed beyond 180 days from the date the
40 payment is received by the probation department.

1 ~~(c) In counties or cities and counties where road camps, farms,~~
2 ~~or other public work is available the court may place the~~
3 ~~probationer in the road camp, farm, or other public work instead~~
4 ~~of in jail. In this case, Section 25359 of the Government Code shall~~
5 ~~apply to probation and the court shall have the same power to~~
6 ~~require adult probationers to work, as prisoners confined in the~~
7 ~~county jail are required to work, at public work. Each county board~~
8 ~~of supervisors may fix the scale of compensation of the adult~~
9 ~~probationers in that county.~~

10 ~~(d) In all cases of probation the court may require as a condition~~
11 ~~of probation that the probationer go to work and earn money for~~
12 ~~the support of his or her dependents or to pay any fine imposed or~~
13 ~~reparation condition, to keep an account of his or her earnings, to~~
14 ~~report them to the probation officer and apply those earnings as~~
15 ~~directed by the court.~~

16 ~~(e) The court shall also consider whether the defendant as a~~
17 ~~condition of probation shall make restitution to a public agency for~~
18 ~~the costs of an emergency response pursuant to Article 8~~
19 ~~(commencing with Section 53150) of Chapter 1 of Part 1 of~~
20 ~~Division 2 of the Government Code.~~

21 ~~(f) In all felony cases in which, as a condition of probation, a~~
22 ~~judge of the superior court sitting by authority of law elsewhere~~
23 ~~than at the county seat requires a convicted person to serve his or~~
24 ~~her sentence at intermittent periods the sentence may be served on~~
25 ~~the order of the judge at the city jail nearest to the place at which~~
26 ~~the court is sitting, and the cost of his or her maintenance shall be~~
27 ~~a county charge.~~

28 ~~(g) (1) The court and prosecuting attorney shall consider~~
29 ~~whether any defendant who has been convicted of a nonviolent or~~
30 ~~nonserious offense and ordered to participate in community~~
31 ~~service as a condition of probation shall be required to engage in~~
32 ~~the removal of graffiti in the performance of the community~~
33 ~~service. For the purpose of this subdivision, a nonserious offense~~
34 ~~shall not include the following:~~

35 ~~(A) Offenses in violation of the Dangerous Weapons' Control~~
36 ~~Law (Chapter 1 (commencing with Section 12000) of Title 2 of~~
37 ~~Part 4).~~

38 ~~(B) Offenses involving the use of a dangerous or deadly~~
39 ~~weapon, including all violations of Section 417.~~

~~(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.~~

~~(D) Offenses involving annoying or molesting children.~~

~~(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.~~

~~(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:~~

~~(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.~~

~~(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.~~

~~(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.~~

~~(i) (1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.~~

~~(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by mail.~~

~~(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.~~

~~(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1233 and 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.~~

SEC. 21. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

1 (1) A minimum period of probation of 36 months, which may
2 include a period of summary probation as appropriate.

3 (2) A criminal court protective order protecting the victim from
4 further acts of violence, threats, stalking, sexual abuse, and
5 harassment, and, if appropriate, containing residence exclusion or
6 stay-away conditions.

7 (3) Notice to the victim of the disposition of the case.

8 (4) Booking the defendant within one week of sentencing if the
9 defendant has not already been booked.

10 (5) A minimum payment by the defendant of two hundred
11 dollars (\$200) to be disbursed as specified in this paragraph. If,
12 after a hearing in court on the record, the court finds that the
13 defendant does not have the ability to pay, the court may reduce or
14 waive this fee.

15 One-third of the moneys deposited with the county treasurer
16 pursuant to this section shall be retained by counties and deposited
17 in the domestic violence programs special fund created pursuant
18 to Section 18305 of the Welfare and Institutions Code, to be
19 expended for the purposes of Chapter 5 (commencing with Section
20 18290) of Part 6 of Division 9 of the Welfare and Institutions Code.
21 The remainder shall be transferred, once a month, to the Controller
22 for deposit in equal amounts in the Domestic Violence Restraining
23 Order Reimbursement Fund and in the Domestic Violence
24 Training and Education Fund, which are hereby created, in an
25 amount equal to two-thirds of funds collected during the preceding
26 month. Moneys deposited into these funds pursuant to this section
27 shall be available upon appropriation by the Legislature and shall
28 be distributed each fiscal year as follows:

29 (A) Funds from the Domestic Violence Restraining Order
30 Reimbursement Fund shall be distributed to local law enforcement
31 or other criminal justice agencies for state-mandated local costs
32 resulting from the notification requirements set forth in
33 subdivision (b) of Section 6380 of the Family Code, based on the
34 annual notification from the Department of Justice of the number
35 of restraining orders issued and registered in the state domestic
36 violence restraining order registry maintained by the Department
37 of Justice, for the development and maintenance of the domestic
38 violence restraining order databank system.

39 (B) Funds from the Domestic Violence Training and Education
40 Fund shall support a statewide training and education program to

1 increase public awareness of domestic violence and to improve the
2 scope and quality of services provided to the victims of domestic
3 violence. Grants to support this program shall be awarded on a
4 competitive basis and be administered by the State Department of
5 Health Services, in consultation with the statewide domestic
6 violence coalition, which is eligible to receive funding under this
7 section.

8 (6) Successful completion of a batterer's program, as defined
9 in subdivision (c), or if none is available, another appropriate
10 counseling program designated by the court, for a period not less
11 than one year with periodic progress reports by the program to the
12 court every three months or less and weekly sessions of a minimum
13 of two hours class time duration. The defendant shall attend
14 consecutive weekly sessions, unless granted an excused absence
15 for good cause by the program for no more than three individual
16 sessions during the entire program, and shall complete the
17 program within 18 months, unless, after a hearing, the court finds
18 good cause to modify the requirements of consecutive attendance
19 or completion within 18 months.

20 (7) (A) (i) The court shall order the defendant to comply with
21 all probation requirements, including the requirements to attend
22 counseling, keep all program appointments, and pay program fees
23 based upon the ability to pay.

24 (ii) The terms of probation for offenders shall not be lifted until
25 all reasonable fees due to the counseling program have been paid
26 in full, but in no case shall probation be extended beyond the term
27 provided in subdivision (a) of Section 1203.1. If the court finds
28 that the defendant does not have the ability to pay the fees based
29 on the defendant's changed circumstances, the court may reduce
30 or waive the fees.

31 (B) Upon request by the batterer's program, the court shall
32 provide the defendant's arrest report, prior incidents of violence,
33 and treatment history to the program.

34 (8) The court also shall order the defendant to perform a
35 specified amount of appropriate community service, as designated
36 by the court. The defendant shall present the court with proof of
37 completion of community service and the court shall determine if
38 the community service has been satisfactorily completed. If
39 sufficient staff and resources are available, the community service

1 shall be performed under the jurisdiction of the local agency
2 overseeing a community service program.

3 (9) If the program finds that the defendant is unsuitable, the
4 program shall immediately contact the probation department or
5 the court. The probation department or court shall either
6 recalendar the case for hearing or refer the defendant to an
7 appropriate alternative batterer's program.

8 (10) (A) Upon recommendation of the program, a court shall
9 require a defendant to participate in additional sessions throughout
10 the probationary period, unless it finds that it is not in the interests
11 of justice to do so, states its reasons on the record, and enters them
12 into the minutes. In deciding whether the defendant would benefit
13 from more sessions, the court shall consider whether any of the
14 following conditions exist:

15 (i) The defendant has been violence free for a minimum of six
16 months.

17 (ii) The defendant has cooperated and participated in the
18 batterer's program.

19 (iii) The defendant demonstrates an understanding of and
20 practices positive conflict resolution skills.

21 (iv) The defendant blames, degrades, or has committed acts
22 that dehumanize the victim or puts at risk the victim's safety,
23 including, but not limited to, molesting, stalking, striking,
24 attacking, threatening, sexually assaulting, or battering the victim.

25 (v) The defendant demonstrates an understanding that the use
26 of coercion or violent behavior to maintain dominance is
27 unacceptable in an intimate relationship.

28 (vi) The defendant has made threats to harm anyone in any
29 manner.

30 (vii) The defendant has complied with applicable requirements
31 under paragraph (6) of subdivision (c) or subparagraph (C) to
32 receive alcohol counseling, drug counseling, or both.

33 (viii) The defendant demonstrates acceptance of responsibility
34 for the abusive behavior perpetrated against the victim.

35 (B) The program shall immediately report any violation of the
36 terms of the protective order, including any new acts of violence
37 or failure to comply with the program requirements, to the court,
38 the prosecutor, and, if formal probation has been ordered, to the
39 probation department. The probationer shall file proof of

1 enrollment in a batterer's program with the court within 30 days
2 of conviction.

3 (C) Concurrent with other requirements under this section, in
4 addition to, and not in lieu of, the batterer's program, and unless
5 prohibited by the referring court, the probation department or the
6 court may make provisions for a defendant to use his or her
7 resources to enroll in a chemical dependency program or to enter
8 voluntarily a licensed chemical dependency recovery hospital or
9 residential treatment program that has a valid license issued by the
10 state to provide alcohol or drug services to receive program
11 participation credit, as determined by the court. The probation
12 department shall document evidence of this hospital or residential
13 treatment participation in the defendant's program file.

14 (11) The conditions of probation may include, in lieu of a fine,
15 but not in lieu of the fund payment required under paragraph (5),
16 one or more of the following requirements:

17 (A) That the defendant make payments to a battered women's
18 shelter, up to a maximum of five thousand dollars (\$5,000).

19 (B) That the defendant reimburse the victim for reasonable
20 expenses that the court finds are the direct result of the defendant's
21 offense.

22 For any order to pay a fine, to make payments to a battered
23 women's shelter, or to pay restitution as a condition of probation
24 under this subdivision, the court shall make a determination of the
25 defendant's ability to pay. Determination of a defendant's ability
26 to pay may include his or her future earning capacity. A defendant
27 shall bear the burden of demonstrating lack of his or her ability to
28 pay. Express findings by the court as to the factors bearing on the
29 amount of the fine shall not be required. In no event shall any order
30 to make payments to a battered women's shelter be made if it
31 would impair the ability of the defendant to pay direct restitution
32 to the victim or court-ordered child support. When the injury to a
33 married person is caused in whole or in part by the criminal acts
34 of his or her spouse in violation of this section, the community
35 property shall not be used to discharge the liability of the offending
36 spouse for restitution to the injured spouse, as required by Section
37 ~~1203.04, as operative on or before August 2, 1995, or Section~~
38 ~~1202.4, 1231,~~ or to a shelter for costs with regard to the injured
39 spouse, until all separate property of the offending spouse is
40 exhausted.

1 (12) If it appears to the prosecuting attorney, the court, or the
2 probation department that the defendant is performing
3 unsatisfactorily in the assigned program, is not benefiting from
4 counseling, or has engaged in criminal conduct, upon request of
5 the probation officer, the prosecuting attorney, or on its own
6 motion, the court, as a priority calendar item, shall hold a hearing
7 to determine whether further sentencing should proceed. The court
8 may consider factors, including, but not limited to, any violence
9 by the defendant against the former or a new victim while on
10 probation and noncompliance with any other specific condition of
11 probation. If the court finds that the defendant is not performing
12 satisfactorily in the assigned program, is not benefiting from the
13 program, has not complied with a condition of probation, or has
14 engaged in criminal conduct, the court shall terminate the
15 defendant's participation in the program and shall proceed with
16 further sentencing.

17 (b) If a person is granted formal probation for a crime in which
18 the victim is a person defined in Section 6211 of the Family Code,
19 in addition to the terms specified in subdivision (a), all of the
20 following shall apply:

21 (1) The probation department shall make an investigation and
22 take into consideration the defendant's age, medical history,
23 employment and service records, educational background,
24 community and family ties, prior incidents of violence, police
25 report, treatment history, if any, demonstrable motivation, and
26 other mitigating factors in determining which batterer's program
27 would be appropriate for the defendant. This information shall be
28 provided to the batterer's program if it is requested. The probation
29 department shall also determine which community programs the
30 defendant would benefit from and which of those programs would
31 accept the defendant. The probation department shall report its
32 findings and recommendations to the court.

33 (2) The court shall advise the defendant that the failure to report
34 to the probation department for the initial investigation, as directed
35 by the court, or the failure to enroll in a specified program, as
36 directed by the court or the probation department, shall result in
37 possible further incarceration. The court, in the interests of justice,
38 may relieve the defendant from the prohibition set forth in this
39 subdivision based upon the defendant's mistake or excusable
40 neglect. Application for this relief shall be filed within 20 court



1 days of the missed deadline. This time limitation may not be
2 extended. A copy of any application for relief shall be served on
3 the office of the prosecuting attorney.

4 (3) After the court orders the defendant to a batterer's program,
5 the probation department shall conduct an initial assessment of the
6 defendant, including, but not limited to, all of the following:

7 (A) Social, economic, and family background.

8 (B) Education.

9 (C) Vocational achievements.

10 (D) Criminal history.

11 (E) Medical history.

12 (F) Substance abuse history.

13 (G) Consultation with the probation officer.

14 (H) Verbal consultation with the victim, only if the victim
15 desires to participate.

16 (I) Assessment of the future probability of the defendant
17 committing murder.

18 (4) The probation department shall attempt to notify the victim
19 regarding the requirements for the defendant's participation in the
20 batterer's program, as well as regarding available victim
21 resources. The victim also shall be informed that attendance in any
22 program does not guarantee that an abuser will not be violent.

23 (c) The court or the probation department shall refer
24 defendants only to batterer's programs that follow standards
25 outlined in paragraph (1), which may include, but are not limited
26 to, lectures, classes, group discussions, and counseling. The
27 probation department shall design and implement an approval and
28 renewal process for batterer's programs and shall solicit input
29 from criminal justice agencies and domestic violence victim
30 advocacy programs.

31 (1) The goal of a batterer's program under this section shall be
32 to stop domestic violence. A batterer's program shall consist of the
33 following components:

34 (A) Strategies to hold the defendant accountable for the
35 violence in a relationship, including, but not limited to, providing
36 the defendant with a written statement that the defendant shall be
37 held accountable for acts or threats of domestic violence.

38 (B) A requirement that the defendant participate in ongoing
39 same-gender group sessions.

1 (C) An initial intake that provides written definitions to the
2 defendant of physical, emotional, sexual, economic, and verbal
3 abuse, and the techniques for stopping these types of abuse.

4 (D) Procedures to inform the victim regarding the
5 requirements for the defendant's participation in the intervention
6 program as well as regarding available victim resources. The
7 victim also shall be informed that attendance in any program does
8 not guarantee that an abuser will not be violent.

9 (E) A requirement that the defendant attend group sessions free
10 of chemical influence.

11 (F) Educational programming that examines, at a minimum,
12 gender roles, socialization, the nature of violence, the dynamics of
13 power and control, and the effects of abuse on children and others.

14 (G) A requirement that excludes any couple counseling or
15 family counseling, or both.

16 (H) Procedures that give the program the right to assess
17 whether or not the defendant would benefit from the program and
18 to refuse to enroll the defendant if it is determined that the
19 defendant would not benefit from the program, so long as the
20 refusal is not because of the defendant's inability to pay. If
21 possible, the program shall suggest an appropriate alternative
22 program.

23 (I) Program staff who, to the extent possible, have specific
24 knowledge regarding, but not limited to, spousal abuse, child
25 abuse, sexual abuse, substance abuse, the dynamics of violence
26 and abuse, the law, and procedures of the legal system.

27 (J) Program staff who are encouraged to utilize the expertise,
28 training, and assistance of local domestic violence centers.

29 (K) A requirement that the defendant enter into a written
30 agreement with the program, which shall include an outline of the
31 contents of the program, the attendance requirements, the
32 requirement to attend group sessions free of chemical influence,
33 and a statement that the defendant may be removed from the
34 program if it is determined that the defendant is not benefiting
35 from the program or is disruptive to the program.

36 (L) A requirement that the defendant sign a confidentiality
37 statement prohibiting disclosure of any information obtained
38 through participating in the program or during group sessions
39 regarding other participants in the program.



1 (M) Program content that provides cultural and ethnic
2 sensitivity.

3 (N) A requirement of a written referral from the court or
4 probation department prior to permitting the defendant to enroll in
5 the program. The written referral shall state the number of
6 minimum sessions required by the court.

7 (O) Procedures for submitting to the probation department all
8 of the following uniform written responses:

9 (i) Proof of enrollment, to be submitted to the court and the
10 probation department and to include the fee determined to be
11 charged to the defendant, based upon the ability to pay, for each
12 session.

13 (ii) Periodic progress reports that include attendance, fee
14 payment history, and program compliance.

15 (iii) Final evaluation that includes the program's evaluation of
16 the defendant's progress, using the criteria set forth in paragraph
17 (4) of subdivision (a) and recommendation for either successful or
18 unsuccessful termination or continuation in the program.

19 (P) A sliding fee schedule based on the defendant's ability to
20 pay. The batterer's program shall develop and utilize a sliding fee
21 scale that recognizes both the defendant's ability to pay and the
22 necessity of programs to meet overhead expenses. An indigent
23 defendant may negotiate a deferred payment schedule, but shall
24 pay a nominal fee, if the defendant has the ability to pay the
25 nominal fee. Upon a hearing and a finding by the court that the
26 defendant does not have the financial ability to pay the nominal
27 fee, the court shall waive this fee. The payment of the fee shall be
28 made a condition of probation if the court determines the
29 defendant has the present ability to pay the fee. The fee shall be
30 paid during the term of probation unless the program sets other
31 conditions. The acceptance policies shall be in accordance with the
32 scaled fee system.

33 (2) The court shall refer persons only to batterer's programs
34 that have been approved by the probation department pursuant to
35 paragraph (5). The probation department shall do both of the
36 following:

37 (A) Provide for the issuance of a provisional approval,
38 provided that the applicant is in substantial compliance with
39 applicable laws and regulations and an urgent need for approval

1 exists. A provisional approval shall be considered an authorization
2 to provide services and shall not be considered a vested right.

3 (B) If the probation department determines that a program is
4 not in compliance with standards set by the department, the
5 department shall provide written notice of the noncompliant areas
6 to the program. The program shall submit a written plan of
7 corrections within 14 days from the date of the written notice on
8 noncompliance. A plan of correction shall include, but not be
9 limited to, a description of each corrective action and timeframe
10 for implementation. The department shall review and approve all
11 or any part of the plan of correction and notify the program of
12 approval or disapproval in writing. If the program fails to submit
13 a plan of correction or fails to implement the approved plan of
14 correction, the department shall consider whether to revoke or
15 suspend approval and, upon revoking or suspending approval,
16 shall have the option to cease referrals of defendants under this
17 section.

18 (3) No program, regardless of its source of funding, shall be
19 approved unless it meets all of the following standards:

20 (A) The establishment of guidelines and criteria for education
21 services, including standards of services that may include lectures,
22 classes, and group discussions.

23 (B) Supervision of the defendant for the purpose of evaluating
24 the person's progress in the program.

25 (C) Adequate reporting requirements to ensure that all persons
26 who, after being ordered to attend and complete a program, may
27 be identified for either failure to enroll in, or failure to successfully
28 complete, the program or for the successful completion of the
29 program as ordered. The program shall notify the court and the
30 probation department in writing within the period of time and in
31 the manner specified by the court of any person who fails to
32 complete the program. Notification shall be given if the program
33 determines that the defendant is performing unsatisfactorily or if
34 the defendant is not benefiting from the education, treatment, or
35 counseling.

36 (D) No victim shall be compelled to participate in a program or
37 counseling, and no program may condition a defendant's
38 enrollment on participation by the victim.



1 (4) In making referrals of indigent defendants to approved
2 batterer's programs, the probation department shall apportion
3 these referrals evenly among the approved programs.

4 (5) The probation department shall have the sole authority to
5 approve a batterer's program for probation. The program shall be
6 required to obtain only one approval but shall renew that approval
7 annually.

8 (A) The procedure for the approval of a new or existing
9 program shall include all of the following:

10 (i) The completion of a written application containing
11 necessary and pertinent information describing the applicant
12 program.

13 (ii) The demonstration by the program that it possesses
14 adequate administrative and operational capability to operate a
15 batterer's treatment program. The program shall provide
16 documentation to prove that the program has conducted batterer's
17 programs for at least one year prior to application. This
18 requirement may be waived under subparagraph (A) of paragraph
19 (2) if there is no existing batterer's program in the city, county, or
20 city and county.

21 (iii) The onsite review of the program, including monitoring of
22 a session to determine that the program adheres to applicable
23 statutes and regulations.

24 (iv) The payment of the approval fee.

25 (B) The probation department shall fix a fee for approval not
26 to exceed two hundred fifty dollars (\$250) and for approval
27 renewal not to exceed two hundred fifty dollars (\$250) every year
28 in an amount sufficient to cover its cost in administering the
29 approval process under this section. No fee shall be charged for the
30 approval of local governmental entities.

31 (C) The probation department has the sole authority to approve
32 the issuance, denial, suspension, or revocation of approval and to
33 cease new enrollments or referrals to a batterer's program under
34 this section. The probation department shall review information
35 relative to a program's performance or failure to adhere to
36 standards, or both. The probation department may suspend or
37 revoke any approval issued under this subdivision or deny an
38 application to renew an approval or to modify the terms and
39 conditions of approval, based on grounds established by
40 probation, including, but not limited to, either of the following:

1 (i) Violation of this section by any person holding approval or
2 by a program employee in a program under this section.

3 (ii) Misrepresentation of any material fact in obtaining the
4 approval.

5 (6) For defendants who are chronic users or serious abusers of
6 drugs or alcohol, standard components in the program shall
7 include concurrent counseling for substance abuse and violent
8 behavior, and in appropriate cases, detoxification and abstinence
9 from the abused substance.

10 (7) The program shall conduct an exit conference that assesses
11 the defendant's progress during his or her participation in the
12 batterer's program.

13 *SEC. 22. Section 1203.1 of the Penal Code is amended to*
14 *read:*

15 1203.1. (a) The court, or judge thereof, in the order granting
16 probation, may suspend the imposing or the execution of the
17 sentence and may direct that the suspension may continue for a
18 period of time not exceeding the maximum possible term of the
19 sentence, except as hereinafter set forth, and upon those terms and
20 conditions as it shall determine. The court, or judge thereof, in the
21 order granting probation and as a condition thereof, may imprison
22 the defendant in a county jail for a period not exceeding the
23 maximum time fixed by law in the case.

24 However, where the maximum possible term of the sentence is
25 five years or less, then the period of suspension of imposition or
26 execution of sentence may, in the discretion of the court, continue
27 for not over five years. The following shall apply to this
28 subdivision:

29 (1) The court may fine the defendant in a sum not to exceed the
30 maximum fine provided by law in the case.

31 (2) The court may, in connection with granting probation,
32 impose either imprisonment in a county jail or a fine, both, or
33 neither.

34 (3) The court shall provide for restitution in proper cases. ~~The~~
35 ~~restitution order shall be fully enforceable as a civil judgment~~
36 ~~forthwith and in accordance with Section 1202.4 of the Penal~~
37 ~~Code, as provided in Title 8.5 (commencing with Section 1230).~~

38 (4) The court may require bonds for the faithful observance and
39 performance of any or all of the conditions of probation.

1 (b) The court shall consider whether the defendant as a
 2 condition of probation shall make restitution to the victim or the
 3 Restitution Fund. Any restitution payment received by a probation
 4 department in the form of cash or money order shall be forwarded
 5 to the victim within 30 days from the date the payment is received
 6 by the department. Any restitution payment received by a
 7 probation department in the form of a check or draft shall be
 8 forwarded to the victim within 45 days from the date the payment
 9 is received by the department, provided, that payment need not be
 10 forwarded to a victim until 180 days from the date the first
 11 payment is received, if the restitution payments for that victim
 12 received by the probation department total less than fifty dollars
 13 (\$50). In cases where the court has ordered the defendant to pay
 14 restitution to multiple victims and where the administrative cost of
 15 disbursing restitution payments to multiple victims involves a
 16 significant cost, any restitution payment received by a probation
 17 department shall be forwarded to multiple victims when it is
 18 cost-effective to do so, but in no event shall restitution
 19 disbursements be delayed beyond 180 days from the date the
 20 payment is received by the probation department.

21 (c) In counties or cities and counties where road camps, farms,
 22 or other public work is available the court may place the
 23 probationer in the road camp, farm, or other public work instead
 24 of in jail. In this case, Section 25359 of the Government Code shall
 25 apply to probation and the court shall have the same power to
 26 require adult probationers to work, as prisoners confined in the
 27 county jail are required to work, at public work. Each county board
 28 of supervisors may fix the scale of compensation of the adult
 29 probationers in that county.

30 (d) In all cases of probation the court may require as a condition
 31 of probation that the probationer go to work and earn money for
 32 the support of his or her dependents or to pay any fine imposed or
 33 reparation condition, to keep an account of his or her earnings, to
 34 report them to the probation officer and apply those earnings as
 35 directed by the court.

36 (e) The court shall also consider whether the defendant as a
 37 condition of probation shall make restitution to a public agency for
 38 the costs of an emergency response pursuant to Article 8
 39 (commencing with Section 53150) of Chapter 1 of Part 1 of
 40 Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to

1 engage in the performance of house repairs or yard services for
2 senior citizens and the performance of repairs to senior centers
3 through contact with local senior service organizations in the
4 performance of the community service.

5 (i) (1) Upon conviction of any offense involving child abuse
6 or neglect, the court may require, in addition to any or all of the
7 above-mentioned terms of imprisonment, fine, and other
8 reasonable conditions, that the defendant shall participate in
9 counseling or education programs, or both, including, but not
10 limited to, parent education or parenting programs operated by
11 community colleges, school districts, other public agencies, or
12 private agencies.

13 (2) Upon conviction of any sex offense subjecting the
14 defendant to the registration requirements of Section 290, the
15 court may order as a condition of probation, at the request of the
16 victim or in the court's discretion, that the defendant stay away
17 from the victim and the victim's residence or place of employment,
18 and that the defendant have no contact with the victim in person,
19 by telephone or electronic means, or by mail.

20 (j) The court may impose and require any or all of the
21 above-mentioned terms of imprisonment, fine, and conditions,
22 and other reasonable conditions, as it may determine are fitting and
23 proper to the end that justice may be done, that amends may be
24 made to society for the breach of the law, for any injury done to any
25 person resulting from that breach, and generally and specifically
26 for the reformation and rehabilitation of the probationer, and that
27 should the probationer violate any of the terms or conditions
28 imposed by the court in the matter, it shall have authority to modify
29 and change any and all the terms and conditions and to reimprison
30 the probationer in the county jail within the limitations of the
31 penalty of the public offense involved. Upon the defendant being
32 released from the county jail under the terms of probation as
33 originally granted or any modification subsequently made, and in
34 all cases where confinement in a county jail has not been a
35 condition of the grant of probation, the court shall place the
36 defendant or probationer in and under the charge of the probation
37 officer of the court, for the period or term fixed for probation.
38 However, upon the payment of any fine imposed and the
39 fulfillment of all conditions of probation, probation shall cease at
40 the end of the term of probation, or sooner, in the event of

1 modification. In counties and cities and counties in which there are
2 facilities for taking fingerprints, those of each probationer shall be
3 taken and a record of them kept and preserved.

4 (k) Notwithstanding any other provisions of law to the
5 contrary, except as provided in Section 13967, as operative on or
6 before September 28, 1994, of the Government Code and Section
7 13967.5 of the Government Code and Sections ~~1202.4, 1233 and~~
8 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and
9 Section 1464, and Section 1203.04, as operative on or before
10 August 2, 1995, all fines collected by a county probation officer
11 in any of the courts of this state, as a condition of the granting of
12 probation or as a part of the terms of probation, shall be paid into
13 the county treasury and placed in the general fund for the use and
14 benefit of the county.

15 ~~(l) If the court orders restitution to be made to the victim, the~~
16 ~~board of supervisors may add a fee to cover the actual~~
17 ~~administrative cost of collecting restitution but not to exceed 10~~
18 ~~percent of the total amount ordered to be paid. The fees shall be~~
19 ~~paid into the general fund of the county treasury for the use and~~
20 ~~benefit of the county.~~

21 SEC. 23. Section 1203.1d of the Penal Code is amended to
22 read:

23 1203.1d. (a) In determining the amount and manner of
24 disbursement under an order made pursuant to this code requiring
25 a defendant to make reparation or restitution to a victim of a crime,
26 to pay any money as reimbursement for legal assistance provided
27 by the court, to pay any cost of probation or probation
28 investigation, to pay any cost of jail or other confinement, or to pay
29 any other reimbursable costs, the court, after determining the
30 amount of any fine and penalty assessments, and a county financial
31 evaluation officer when making a financial evaluation, shall first
32 determine the amount of restitution to be ordered paid to any
33 victim, and shall then determine the amount of the other
34 reimbursable costs.

35 If payment is made in full, the payment shall be apportioned and
36 disbursed in the amounts ordered by the court.

37 If reasonable and compatible with the defendant's financial
38 ability, the court may order payments to be made in installments.

39 (b) With respect to installment payments and amounts
40 collected by the Franchise Tax Board pursuant to Section 19280

1 of the Revenue and Taxation Code and subsequently transferred by
2 the Controller pursuant to Section 19282 of the Revenue and
3 Taxation Code, the board of supervisors shall provide that
4 disbursements be made in the following order of priority:

5 (1) Restitution ordered to, or on behalf of, the victim pursuant
6 to Section 1231.

7 (2) The state surcharge ordered pursuant to Section 1465.7.

8 (3) Any fines, penalty assessments, and restitution fines
9 ordered pursuant to Section 1233. Payment of each of these items
10 shall be made on a proportional basis to the total amount levied for
11 all of these items.

12 (4) Any other reimburseable costs.

13 (c) The board of supervisors shall apply these priorities of
14 disbursement to orders or parts of orders in cases where defendants
15 have been ordered to pay more than one court order.

16 (d) Documentary evidence, such as bills, receipts, repair
17 estimates, insurance payment statements, payroll stubs, business
18 records, and similar documents relevant to the value of the stolen
19 or damaged property, medical expenses, and wages and profits lost
20 shall not be excluded as hearsay evidence.

21 SEC. 24. Section 1203.2 of the Penal Code is amended to
22 read:

23 1203.2. (a) At any time during the probationary period of a
24 person released on probation under the care of a probation officer
25 pursuant to this chapter, or of a person released on conditional
26 sentence or summary probation not under the care of a probation
27 officer, if any probation officer or peace officer has probable cause
28 to believe that the probationer is violating any term or condition
29 of his or her probation or conditional sentence, the officer may,
30 without warrant or other process and at any time until the final
31 disposition of the case, rearrest the person and bring him or her
32 before the court or the court may, in its discretion, issue a warrant
33 for his or her rearrest. Upon rearrest, or upon the issuance of a
34 warrant for rearrest the court may revoke and terminate probation
35 if the interests of justice so require and the court, in its judgment,
36 has reason to believe from the report of the probation officer or
37 otherwise that the person has violated any of the conditions of his
38 or her probation, has become abandoned to improper associates or
39 a vicious life, or has subsequently committed other offenses,
40 regardless whether he or she has been prosecuted for ~~such~~ *those*

1 offenses. However, probation shall not be revoked for failure of a
2 person to make restitution pursuant to applicable law as a
3 condition of probation unless the court determines that the
4 defendant has willfully failed to pay and has the ability to pay.
5 Restitution shall be consistent with a person's ability to pay. The
6 revocation, summary or otherwise, shall serve to toll the running
7 of the probationary period.

8 (b) Upon its own motion or upon the petition of the probationer,
9 probation officer or the district attorney of the county in which the
10 probationer is supervised, the court may modify, revoke, or
11 terminate the probation of the probationer pursuant to this
12 subdivision. The court shall give notice of its motion, and the
13 probation officer or the district attorney shall give notice of his or
14 her petition to the probationer, his or her attorney of record, and
15 the district attorney or the probation officer, as the case may be.
16 The probationer shall give notice of his or her petition to the
17 probation officer and notice of any motion or petition shall be
18 given to the district attorney in all cases. The court shall refer its
19 motion or the petition to the probation officer. After the receipt of
20 a written report from the probation officer, the court shall read and
21 consider the report and either its motion or the petition and may
22 modify, revoke, or terminate the probation of the probationer upon
23 the grounds set forth in subdivision (a) if the interests of justice so
24 require.

25 The notice required by this subdivision may be given to the
26 probationer upon his or her first court appearance in the
27 proceeding. Upon the agreement by the probationer in writing to
28 the specific terms of a modification or termination of a specific
29 term of probation, any requirement that the probationer make a
30 personal appearance in court for the purpose of a modification or
31 termination shall be waived. Prior to the modification or
32 termination and waiver of appearance, the probationer shall be
33 informed of his or her right to consult with counsel, and if indigent
34 the right to secure court appointed counsel. If the probationer
35 waives his or her right to counsel a written waiver shall be
36 required. If probationer consults with counsel and thereafter
37 agrees to a modification or termination of the term of probation
38 and waiver of personal appearance, the agreement shall be signed
39 by counsel showing approval for the modification or termination
40 and waiver.

1 (c) Upon any revocation and termination of probation the court
2 may, if the sentence has been suspended, pronounce judgment for
3 any time within the longest period for which the person might have
4 been sentenced. However, if the judgment has been pronounced
5 and the execution thereof has been suspended, the court may
6 revoke the suspension and order that the judgment shall be in full
7 force and effect. In either case, the person shall be delivered over
8 to the proper officer to serve his or her sentence, less any credits
9 herein provided for.

10 (d) In any case of revocation and termination of probation,
11 including, but not limited to, cases in which the judgment has been
12 pronounced and the execution thereof has been suspended, upon
13 the revocation and termination, the court may, in lieu of any other
14 sentence, commit the person to the Department of the Youth
15 Authority if he or she is otherwise eligible for ~~such~~ *that*
16 commitment.

17 (e) If probation has been revoked before the judgment has been
18 pronounced, the order revoking probation may be set aside for
19 good cause upon motion made before pronouncement of
20 judgment. If probation has been revoked after the judgment has
21 been pronounced, the judgment and the order which revoked the
22 probation may be set aside for good cause within 30 days after the
23 court has notice that the execution of the sentence has commenced.
24 If an order setting aside the judgment, the revocation of probation,
25 or both is made after the expiration of the probationary period, the
26 court may again place the person on probation for that period and
27 with those terms and conditions as it could have done immediately
28 following conviction.

29 SEC. 25. Section 1203.3 of the Penal Code is amended to
30 read:

31 1203.3. (a) The court shall have authority at any time during
32 the term of probation to revoke, modify, or change its order of
33 suspension of imposition or execution of sentence. The court may
34 at any time when the ends of justice will be subserved thereby, and
35 when the good conduct and reform of the person so held on
36 probation shall warrant it, terminate the period of probation, and
37 discharge the person so held.

38 (b) The exercise of the court's authority in subdivision (a) to
39 revoke, modify, change, or terminate probation is subject to the
40 following:

(1) Before any sentence or term or condition of probation is modified, a hearing shall be held in open court before the judge. The prosecuting attorney shall be given a two-day written notice and an opportunity to be heard on the matter, except that, as to modifying or terminating a protective order in a case involving domestic violence, as defined in Section 6211 of the Family Code, the prosecuting attorney shall be given a five-day written notice and an opportunity to be heard.

(A) If the sentence or term or condition of probation is modified pursuant to this section, the judge shall state the reasons for that modification on the record.

(B) As used in this section, modification of sentence shall include reducing a felony to a misdemeanor.

(2) No order shall be made without written notice first given by the court or the clerk thereof to the proper probation officer of the intention to revoke, modify, or change its order.

(3) In all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall at the end of the term of probation or any extension thereof, be by the court discharged subject to the provisions of these sections.

(4) The court may limit or terminate a protective order that is a condition of probation in a case involving domestic violence, as defined in Section 6211 of the Family Code. In determining whether to limit or terminate the protective order, the court shall consider if there has been any material change in circumstances since the crime for which the order was issued, and any issue that relates to whether there exists good cause for the change, including, but not limited to consideration of all of the following:

(A) Whether the probationer has accepted responsibility for the abusive behavior perpetrated against the victim.

(B) Whether the probationer is currently attending and actively participating in counseling sessions.

(C) Whether the probationer has completed parenting counseling, or attended alcoholics or narcotics counseling.

(D) Whether the probationer has moved from the state, or is incarcerated.

(E) Whether the probationer is still cohabitating, or intends to cohabitate, with any subject of the order.

1 (F) Whether the defendant has performed well on probation,
2 including consideration of any progress reports.

3 (G) Whether the victim desires the change, and is so, the
4 victim's reasons, whether the victim has consulted a victim
5 advocate, and whether the victim has prepared a safety plan and
6 has access to local resources.

7 (H) Whether the change will impact any children involved,
8 including consideration of any Child Protective Services
9 information.

10 (I) Whether the ends of justice would be served by limiting or
11 terminating the order.

12 (c) If a probationer is ordered to serve time in jail, and the
13 probationer escapes while serving that time, the probation is
14 revoked as a matter of law on the day of the escape.

15 (d) If probation is revoked pursuant to subdivision (c), upon
16 taking the probationer into custody, the probationer shall be
17 accorded a hearing or hearings consistent with the holding in the
18 case of *People v. Vickers* (1972) 8 Cal.3d 451. The purpose of that
19 hearing or hearings is not to revoke probation, as the revocation
20 has occurred as a matter of law in accordance with subdivision (c),
21 but rather to afford the defendant an opportunity to require the
22 prosecution to establish that the alleged violation did in fact occur
23 and to justify the revocation.

24 (e) This section does not apply to cases covered by Section
25 1203.2.

26 SEC. 26. Section 1214 of the Penal Code is amended to read:
27 1214. A judgment for a fine with or without imprisonment,
28 may be enforced in the manner provided for the enforcement of
29 money judgments generally.

30 SEC. 27. Section 1214.5 of the Penal Code is repealed.

31 SEC. 28. Title 8.5 (commencing with Section 1230) is added
32 to Part 2 of the Penal Code, to read:

33
34 TITLE 8.5. VICTIM RESTITUTION

35
36 CHAPTER 1. GENERAL PROVISIONS

37
38 1230. For purposes of this title:

(a) “Board” means the California Victim Compensation and Government Claims Board, or, where applicable, its predecessor, the State Board of Control.

(b) (1) Except where otherwise specified, “restitution,” “restitution order,” “victim restitution,” and “restitution fine” include all restitution and restitution fine orders pursuant to this title, or Section 1202.4 as operative before January 1, 2004, or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

(2) Any reference in statute or regulation to this title or any of its provisions, as they may impact the scope, enforcement, administration, or any other matter relating to criminal court restitution or restitution fine orders, shall be deemed to apply to restitution and restitution fine orders made under earlier operative laws, including, but not limited to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, Section 1202.4, as operative prior to January 1, 2004, and Section 1203.04, as operative on or before August 2, 1995.

1230.1. All provisions outside this title regarding restitution and restitution fine orders in criminal cases are intended to be read consistently with and supplemental to these provisions, and are subject to this title, except to the extent that language or context requires otherwise.

1230.2. Nothing in this title shall be construed to limit the right of a victim to recover and enforce damages in a civil action, except to the extent provisions herein may require reimbursement of grants from the board out of civil damage awards.

CHAPTER 2. VICTIM RESTITUTION ORDERS

1231. In every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require at the time of sentencing that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The defendant shall be informed of his or her right to

1 have a judicial determination of the amount of restitution, and shall
2 be provided with a hearing, shall waive a hearing, or shall stipulate
3 to the amount of the restitution ordered.

4 (a) The defendant has the right to a hearing before a judge to
5 dispute the determination of the amount of restitution. The court
6 may modify the amount, on its own motion or on the motion of the
7 district attorney, the victim or victims, or the defendant. If a
8 motion is made for modification of a victim restitution order, the
9 victim shall be notified of that motion at least 10 days prior to the
10 proceeding held to decide the motion.

11 (b) Determination of the amount of restitution ordered
12 pursuant to this section shall not be affected by the indemnification
13 or subrogation rights of any third party. Restitution ordered
14 pursuant to this subdivision shall be ordered to be deposited to the
15 Restitution Fund to the extent that the victim, as defined in Section
16 1231.6, has received assistance from the Victims of Crime
17 Program pursuant to Chapter 5 (commencing with Section 13950)
18 of Part 4 of Division 3 of Title 2 of the Government Code, or
19 pursuant to the former Article 1 (commencing with Section 13959)
20 of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government
21 Code.

22 (c) To the extent possible, the restitution order shall be prepared
23 by the sentencing court, shall identify each victim and each loss to
24 which it pertains, and shall be of a dollar amount that is sufficient
25 to fully reimburse the victim or victims for every determined
26 economic loss incurred as the result of the defendant's criminal
27 conduct, including, but not limited to, all of the following:

28 (1) Full or partial payment for the value of stolen or damaged
29 property. The value of stolen or damaged property shall be the
30 replacement cost of like property, or the actual cost of repairing the
31 property when repair is possible.

32 (2) Medical expenses.

33 (3) Mental health counseling expenses.

34 (4) Wages or profits lost due to injury incurred by the victim,
35 and if the victim is a minor, wages or profits lost by the minor's
36 parent, parents, guardian, or guardians, while caring for the
37 injured minor. Lost wages shall include any commission income
38 as well as any base wages. Commission income shall be
39 established by evidence of commission income during the
40 12-month period prior to the date of the crime for which restitution

1 is being ordered, unless good cause for a shorter time period is
2 shown.

3 (5) Wages or profits lost by the victim, and if the victim is a
4 minor, wages or profits lost by the minor's parent, parents,
5 guardian, or guardians, due to time spent as a witness or in assisting
6 the police or prosecution. Lost wages shall include any
7 commission income as well as any base wages. Commission
8 income shall be established by evidence of commission income
9 during the 12-month period prior to the date of the crime for which
10 restitution is being ordered, unless good cause for a shorter time
11 period is shown.

12 (6) Noneconomic losses, including, but not limited to,
13 psychological harm, for felony violations of Section 288.

14 (7) Interest, at the rate of 10 percent per annum, that accrues as
15 of the date of sentencing or loss, as determined by the court.

16 (8) Actual and reasonable attorney's fees and other costs of
17 collection accrued by a private entity on behalf of the victim.

18 (9) Expenses incurred by an adult victim in relocating away
19 from the defendant, including, but not limited to, deposits for
20 utilities and telephone service, deposits for rental housing,
21 temporary lodging and food expenses, clothing, and personal
22 items. Expenses incurred pursuant to this section shall be verified
23 by law enforcement to be necessary for the personal safety of the
24 victim or by a mental health treatment provider to be necessary for
25 the emotional well-being of the victim.

26 (10) Expenses to install or increase residential security
27 incurred related to a crime, as defined in subdivision (c) of Section
28 667.5, including, but not limited to, a home security device or
29 system, or replacing or increasing the number of locks.

30 (11) Expenses to retrofit a residence or vehicle, or both, to
31 make the residence accessible to or the vehicle operational by the
32 victim, if the victim is permanently disabled, whether the
33 disability is partial or total, as a direct result of the crime.

34 1231.1. (a) Except as provided in subdivision (b), in any case
35 in which a restitution order may be entered pursuant to this chapter,
36 the defendant shall prepare and file a disclosure identifying all
37 assets, income, and liabilities in which the defendant held or
38 controlled a present or future interest as of the date of the
39 defendant's arrest for the crime for which restitution may be
40 ordered. This disclosure shall be available to the victim, the board,

1 and a district attorney as specified in Section 1231.7, and any use
2 the court itself may make of the disclosure shall be consistent with
3 Section 1231.2. The disclosure shall be signed by the defendant
4 upon a form approved or adopted by the Judicial Council for the
5 purpose of facilitating the disclosure. Any defendant who willfully
6 states as true any material matter that he or she knows to be false
7 on the disclosure required by this subdivision is guilty of a
8 misdemeanor, unless this conduct is punishable as perjury or
9 another provision of law provides for a greater penalty.

10 (b) A defendant who fails to file the financial disclosure
11 required in subdivision (a), but who has filed a financial affidavit
12 or financial information pursuant to subdivision (c) of Section
13 987, shall be deemed to have waived the confidentiality of that
14 affidavit or financial information as to a victim in whose favor the
15 order of restitution is entered pursuant to this chapter. The affidavit
16 or information shall serve in lieu of the financial disclosure
17 required in subdivision (a), and subdivisions (c) to (f), inclusive,
18 shall not apply.

19 (c) Except as provided in subdivision (b), the defendant shall
20 file the disclosure with the clerk of the court no later than the date
21 set for the defendant's sentencing, unless otherwise directed by the
22 court. The disclosure may be inspected or copied as provided by
23 subdivision (b), (c), or (d) of Section 1203.05.

24 (d) In its discretion, the court may relieve the defendant of the
25 duty under subdivision (c) of filing with the clerk by requiring that
26 the defendant's disclosure be submitted as an attachment to, and
27 be available to, those authorized to receive the following:

28 (A) Any report submitted pursuant to subparagraph (C) of
29 paragraph (2) of subdivision (b) of Section 1203 or subdivision (g)
30 of Section 1203.

31 (B) Any stipulation submitted pursuant to paragraph (4) of
32 subdivision (b) of Section 1203.

33 (C) Any report by the probation officer, or any information
34 submitted by the defendant applying for a conditional sentence
35 pursuant to subdivision (d) of Section 1203.

36 (e) The court may consider a defendant's unreasonable failure
37 to make a complete disclosure pursuant to subdivision (a) as any
38 of the following:

39 (1) A circumstance in aggravation of the crime in imposing a
40 term under subdivision (b) of Section 1170.

(2) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(3) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(4) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(f) A defendant's failure or refusal to make the required disclosure pursuant to subdivision (a) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(1) Require the defendant to be examined by the district attorney pursuant to Section 1234.9.

(2) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(3) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by subdivision (a) as a condition of probation or suspended sentence.

1231.2. The court shall order full victim restitution under this chapter unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

1231.25. (a) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, or, prior to January 1, 2003, the former Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(b) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.

(c) If the defendant offers evidence to rebut the presumption established by this subdivision, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

1231.3. (a) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this chapter.

1231.5. The making of a restitution order pursuant to Section 1231 shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to Section 1231 shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

1231.6. For purposes of this section, “victim” shall include all of the following:

(a) The immediate surviving family of the actual victim.

(b) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(c) “Derivative victims” as defined in Section 13950 of the Government Code.

1231.7. A restitution order imposed pursuant to this chapter is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was

1 provided with a hearing, waived a hearing, or stipulated to the
2 amount of the restitution ordered.

3 1231.8. If the court orders restitution to be made to the victim,
4 the board of supervisors may add a fee to cover the actual
5 administrative cost of collecting restitution but not to exceed 10
6 percent of the total amount ordered to be paid, to be added to the
7 restitution and included in the order of the court. The fees shall be
8 paid into the general fund of the county treasury for the use and
9 benefit of the county.

10
11 CHAPTER 3. RESTITUTION ORDERS AND PROBATION
12

13 1232. In every case in which the defendant is granted
14 probation, the court shall make the restitution orders imposed
15 pursuant to Sections 1231 and 1233 conditions of probation.

16 1232.1. Any portion of a restitution order that remains
17 unsatisfied after a defendant is no longer on probation shall
18 continue to be enforceable by a victim pursuant to Chapter 5
19 (commencing with Section 1234) until the obligation is satisfied.

20 1232.2. If the court finds and states on the record compelling
21 and extraordinary reasons why a restitution fine or full restitution
22 order should not be required, the court shall order, as a condition
23 of probation, that the defendant perform specified community
24 service, unless it finds and states on the record compelling and
25 extraordinary reasons not to require community service in addition
26 to the finding that restitution should not be required. Upon
27 revocation of probation, a court that has not already done so shall
28 impose full restitution as provided in this title.

29 1232.4. (a) In any case in which the defendant is ordered to
30 pay more than fifty dollars (\$50) in restitution as a condition of
31 probation, the court may, as an additional condition of probation
32 since the court determines that the defendant has the ability to pay,
33 as defined in Section 1203.1b, order the defendant to pay interest
34 at the rate of 10 percent per annum on the principal amount
35 remaining unsatisfied.

36 (b) (1) Except as provided in paragraph (2), interest
37 commences to accrue on the date of entry of the judgment or order.

38 (2) Unless the judgment or order otherwise provides, if
39 restitution is payable in installments, interest commences to accrue
40 as to each installment on the date the installment becomes due.

1232.5. All orders for payment of restitution and restitution fines as conditions of probation shall be administered as provided in provisions that control the making and enforcement of probation orders, including, but not limited to, this chapter and Sections 1203, 1203.1, 1203.1b, 1203.1d, 1203.1e, 1203.1f, 1203.1g, 1203.1j, 1203.1k, 1203.1l, 1203.2, 1205.3, and 1234.

1232.6. (a) The court may, in a manner consistent with Section 1203.3, modify the time and manner of the term of probation for purposes of measuring the timely payment of restitution obligations or the good conduct and reform of the defendant while on probation. The court shall not modify the dollar amount of the restitution obligations due to the good conduct and reform of the defendant, absent compelling and extraordinary reasons, nor shall the court limit the ability of payees to enforce the obligations in the manner of judgments in civil actions.

(b) Nothing in this section shall be construed to prohibit the court from modifying the dollar amount of a restitution order pursuant to Section 1231 at any time during the term of the probation.

CHAPTER 4. RESTITUTION FINES

1233. (a) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(b) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten thousand dollars (\$10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000), if the person is convicted of a misdemeanor.

(c) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars (\$200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

1233.1. The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two hundred dollar (\$200) or one hundred dollar (\$100) minimum.

1233.2. In setting the amount of the fine pursuant to Section 1233 in excess of the two hundred dollar (\$200) or one hundred dollar (\$100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

1233.3. At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

1233.4. The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

CHAPTER 5. ENFORCEMENT AND COLLECTION OF RESTITUTION AND RESTITUTION FINES

1234. A restitution order imposed pursuant to Chapter 2 (commencing with Section 1231) is fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable

1 in the same manner as is provided for the enforcement of any other
2 money judgment.

3 1234.1. To assist in enforcement efforts, upon a victim's
4 request, the court shall provide the victim in whose favor the order
5 of restitution is entered with a certified copy of that order and a
6 copy of the defendant's disclosure pursuant to subdivision (a) of
7 Section 1231.1, affidavit or information pursuant to subdivision
8 (b) of Section 1231.1, or report pursuant to subdivision (d) of
9 Section 1231.1. The court also shall provide these same materials
10 to the board upon request, and to the district attorney upon request
11 in connection with an investigation or prosecution involving
12 perjury or the veracity of the information contained within the
13 defendant's financial disclosure. A victim shall have access to all
14 resources available under the law to enforce the restitution order,
15 including, but not limited to, access to the defendant's financial
16 records, use of wage garnishment and lien procedures, information
17 regarding the defendant's assets, and the ability to apply for
18 restitution from any fund established for the purpose of
19 compensating victims in civil cases. Any portion of a restitution
20 order that remains unsatisfied after a defendant is no longer on
21 probation or parole remains enforceable by the victim. Victims and
22 the board shall inform the court whenever an order to pay
23 restitution is satisfied.

24 1234.2. (a) A judgment for a restitution fine ordered pursuant
25 to Chapter 4 (commencing with Section 1233), with or without
26 imprisonment, may be enforced in the manner provided for the
27 enforcement of money judgments generally. Any portion of a
28 restitution fine that remains unsatisfied after a defendant is no
29 longer on probation or parole is enforceable by the board pursuant
30 to this section.

31 (b) Notwithstanding any other provision of law prohibiting
32 disclosure, the state, as defined in Section 900.6 of the
33 Government Code, a local public entity, as defined in Section
34 900.4 of the Government Code, or any other entity, may provide
35 the board with any and all information to assist in the collection of
36 unpaid portions of a restitution fine for terminated probation or
37 parole cases. For purposes of the preceding sentence, "state, as
38 defined in Section 900.6 of the Government Code," and "any
39 other entity" shall not include the Franchise Tax Board.

1234.3. In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to Section 1233, assess an additional restitution fine in the same amount as that imposed pursuant to Section 1233. This additional restitution fine shall be suspended unless the person's parole is revoked.

1234.4. Notwithstanding Section 1170, when the economic losses of a victim cannot be ascertained at the time of sentencing pursuant to Section 1231, the court shall retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until the losses may be determined. Nothing in this section shall be construed as prohibiting a victim, the district attorney, or a court on its own motion from requesting correction, at any time, of a sentence when the sentence is invalid due to the omission of a restitution order or fine without a finding of compelling and extraordinary reasons pursuant to this title.

1234.5. Upon entry of a restitution order under this title, the following shall apply:

(a) The court shall enter a separate order for income deduction upon determination of the defendant's ability to pay, regardless of the probation status, in accordance with Section 1203. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required.

(b) (1) In any case in which the court enters a separate order for income deduction under this section, the order shall be stayed until the agency in the county responsible for collection of restitution determines that the defendant has failed to meet his or her obligation under the restitution order and the defendant has not provided the agency with good cause for the failure in accordance with paragraph (2).

(2) If the agency responsible for collection of restitution receives information that the defendant has failed to meet his or her obligation under the restitution order, the agency shall request the defendant to provide evidence indicating that timely payments have been made or provide information establishing good cause for the failure. If the defendant fails to either provide the agency with the evidence or fails to establish good cause within five days

1 of the request, the agency shall immediately inform the defendant
2 of that fact, and shall inform the clerk of the court in order that an
3 income deduction order will be served pursuant to subdivision (f)
4 following a 15-day appeal period. The defendant may apply for a
5 hearing to contest the lifting of the stay pursuant to subdivision (f).

6 (c) The income deduction order shall direct a payer to deduct
7 from all income due and payable to the defendant the amount
8 required by the court to meet the defendant's obligation.

9 (d) The income deduction order shall be effective so long as the
10 order for restitution upon which it is based is effective or until
11 further order of the court.

12 (e) When the court orders the income deduction, the court shall
13 furnish to the defendant a statement of his or her rights, remedies,
14 and duties in regard to the income deduction order. The statement
15 shall state all of the following:

16 (1) All fees or interest that will be imposed.

17 (2) The total amount of income to be deducted for each pay
18 period.

19 (3) That the income deduction order applies to current and
20 subsequent payers and periods of employment.

21 (4) That a copy of the income deduction order will be served
22 on the defendant's payer or payers.

23 (5) That enforcement of the income deduction order may only
24 be contested on the ground of mistake of fact regarding the amount
25 of restitution owed.

26 (6) That the defendant is required to notify the clerk of the court
27 within seven days after changes in the defendant's address, payers,
28 and the addresses of his or her payers.

29 (7) That the court order will be stayed in accordance with
30 subdivision (b) and that a hearing is available in accordance with
31 subdivision (f).

32 (f) (1) Upon receiving the notice described in paragraph (2) of
33 subdivision (b), the clerk of the court or officer of the agency
34 responsible for collection of restitution shall serve an income
35 deduction order and the notice to payer on the defendant's payer
36 unless the defendant has applied for a hearing to contest the
37 enforcement of the income deduction order.

38 (2) (A) Service by or upon any person who is a party to a
39 proceeding under this section shall be made in the manner
40 prescribed for service upon parties in a civil action.

(B) Service upon the defendant's payer or successor payer under this section shall be made by prepaid certified mail, return receipt requested.

(3) The defendant, within 15 days after being informed that the order staying the income deduction order will be lifted, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed or on the ground that the defendant has established good cause for the nonpayment. The timely request for a hearing shall stay the service of an income deduction order on all payers of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.

(4) The notice to any payer required by this subdivision shall contain only information necessary for the payer to comply with the income deduction order. The notice shall do all of the following:

(A) Require the payer to deduct from the defendant's income the amount specified in the income deduction order, and to pay that amount to the clerk of the court.

(B) Instruct the payer to implement the income deduction order no later than the first payment date that occurs more than 14 days after the date the income deduction order was served on the payer.

(C) Instruct the payer to forward, within two days after each payment date, to the clerk of the court the amount deducted from the defendant's income and a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.

(D) Specify that if a payer fails to deduct the proper amount from the defendant's income, the payer is liable for the amount the payer should have deducted, plus costs, interest, and reasonable attorney's fees.

(E) Provide that the payer may collect up to five dollars (\$5) against the defendant's income to reimburse the payer for administrative costs for the first income deduction and up to one dollar (\$1) for each deduction thereafter.

(F) State that the income deduction order and the notice to payer are binding on the payer until further notice by the court or until the payer no longer provides income to the defendant.

1 (G) Instruct the payer that, when he or she no longer provides
2 income to the defendant, he or she shall notify the clerk of the court
3 and shall also provide the defendant's last known address and the
4 name and address of the defendant's new payer, if known, and that,
5 if the payer violates this provision, the payer is subject to a civil
6 penalty not to exceed two hundred fifty dollars (\$250) for the first
7 violation or five hundred dollars (\$500) for any subsequent
8 violation.

9 (H) State that the payer shall not discharge, refuse to employ,
10 or take disciplinary action against the defendant because of an
11 income deduction order and shall state that a violation of this
12 provision subjects the payer to a civil penalty not to exceed two
13 hundred fifty dollars (\$250) for the first violation or five hundred
14 dollars (\$500) for any subsequent violation.

15 (I) Inform the payer that when he or she receives income
16 deduction orders requiring that the income of two or more
17 defendants be deducted and sent to the same clerk of a court, he or
18 she may combine the amounts that are to be paid to the depository
19 in a single payment as long as he or she identifies that portion of
20 the payment attributable to each defendant.

21 (J) Inform the payer that if the payer receives more than one
22 income deduction order against the same defendant, he or she shall
23 contact the court for further instructions.

24 (5) The clerk of the court shall enforce income deduction
25 orders against the defendant's successor payer who is located in
26 this state in the same manner prescribed in this subdivision for the
27 enforcement of an income deduction order against a payer.

28 (6) A person may not discharge, refuse to employ, or take
29 disciplinary action against an employee because of the
30 enforcement of an income deduction order. An employer who
31 violates this provision is subject to a civil penalty not to exceed two
32 hundred fifty dollars (\$250) for the first violation or five hundred
33 dollars (\$500) for any subsequent violation.

34 (7) When a payer no longer provides income to a defendant, he
35 or she shall notify the clerk of the court and shall provide the
36 defendant's last known address and the name and address of the
37 defendant's new payer, if known. A payer who violates this
38 provision is subject to a civil penalty not to exceed two hundred
39 fifty dollars (\$250) for the first violation or five hundred dollars
40 (\$500) for a subsequent violation.

(g) As used in this section, “good cause” for failure to meet an obligation or “good cause” for nonpayment means, but shall not be limited to, any of the following:

(1) That there has been a substantial change in the defendant’s economic circumstances, such as involuntary unemployment, involuntary cost-of-living increases, or costs incurred as the result of medical circumstances or a natural disaster.

(2) That the defendant reasonably believes there has been an administrative error with regard to his or her obligation for payment.

(3) Any other similar and justifiable reasons.

1234.6. (a) The restitution fine imposed pursuant to this title shall be payable to the clerk of the court, the probation officer, or any other person responsible for the collection of criminal fines. If the defendant is unable or otherwise fails to pay that fine in a felony case and there is an amount unpaid of one thousand dollars (\$1,000) or more within 60 days after the imposition of sentence, or in a case in which probation is granted, within the period of probation, the clerk of the court, probation officer, or other person to whom the fine is to be paid shall forward to the Controller the abstract of judgment along with any information that may be relevant to the present and future location of the defendant and his or her assets, if any, and any verifiable amount which the defendant may have paid to the victim as a result of the crime.

(b) A restitution fine shall be deemed a debt of the defendant owing to the state for the purposes of Sections 12418 and 12419.5 of the Government Code, excepting any amounts the defendant has paid to the victim as a result of the crime. Upon request by the Controller, the district attorney of a county or the Attorney General may take any necessary action to recover amounts owing on a restitution fine. The amount of the recovery shall be increased by a sum sufficient to cover any costs incurred by any state or local agency in the administration of this section. The remedies provided by this subdivision are in addition to any other remedies provided by law for the enforcement of a judgment.

1234.8. Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any restitution fine or restitution ordered pursuant to this title.

1 1234.9. The district attorney may request an order of
2 examination pursuant to the procedures specified in Article 2
3 (commencing with Section 708.110) of Chapter 6 of Division 2 of
4 Title 9 of Part 2 of the Code of Civil Procedure, in order to
5 determine the defendant's financial assets for purposes of
6 collecting on the restitution order.

7 SEC. 29. Section 1463.18 of the Penal Code is amended to
8 read:

9 1463.18. (a) Notwithstanding the provisions of Section
10 1463, moneys which are collected for a conviction of a violation
11 of Section 23152 or 23153 of the Vehicle Code and which are
12 required to be deposited with the county treasurer pursuant to
13 Section 1463 shall be allocated as follows:

14 (1) The first twenty dollars (\$20) of any amount collected for
15 a conviction shall be transferred to the Restitution Fund. This
16 amount shall be aggregated by the county treasurer and transferred
17 to the State Treasury once per month for deposit in the Restitution
18 Fund.

19 (2) The balance of the amount collected, if any, shall be
20 deposited by the county treasurer pursuant to Section 1463.

21 (b) The amount transferred to the Restitution Fund pursuant to
22 this section shall be in addition to any amount of any additional
23 fine or assessment imposed pursuant to Section 1233. The amount
24 deposited to the Restitution Fund pursuant to this section shall be
25 used for the purpose of indemnification of victims pursuant to
26 Chapter 5 (commencing with Section 13950) of Part 4 of Division
27 3 of Title 2 of the Government Code, with priority given to victims
28 of alcohol-related traffic offenses.

29 SEC. 30. Section 2085.5 of the Penal Code is amended to
30 read:

31 2085.5. (a) In any case in which a prisoner owes a restitution
32 fine imposed pursuant to Section 1233, the Director of Corrections
33 shall deduct a minimum of 20 percent or the balance owing on the
34 fine amount, whichever is less, up to a maximum of 50 percent
35 from the wages and trust account deposits of a prisoner, unless
36 prohibited by federal law, and shall transfer that amount to the
37 California Victim Compensation and Government Claims Board
38 for deposit in the Restitution Fund in the State Treasury. Any
39 amount so deducted shall be credited against the amount owing on

1 the fine. The sentencing court shall be provided a record of the
2 payments.

3 (b) In any case in which a prisoner owes a restitution order
4 imposed pursuant to Section 1231, the Director of Corrections
5 shall deduct a minimum of 20 percent or the balance owing on the
6 order amount, whichever is less, up to a maximum of 50 percent
7 from the wages and trust account deposits of a prisoner, unless
8 prohibited by federal law. If the restitution is owed to a person who
9 has filed an application with the Victims of Crime Program, the
10 director shall transfer that amount to the California Victim
11 Compensation and Government Claims Board for direct payment
12 to the victim, or payment shall be made to the Restitution Fund to
13 the extent that the victim has received assistance pursuant to that
14 program. No deductions shall be made on behalf of victims who
15 have not filed an application with the Victims of Crime Program.
16 The sentencing court shall be provided a record of the payments
17 made to victims and of the payments deposited to the Restitution
18 Fund pursuant to this subdivision.

19 (c) The director shall deduct and retain from the wages and trust
20 account deposits of a prisoner, unless prohibited by federal law, an
21 administrative fee that totals 10 percent of any amount transferred
22 to the California Victim Compensation and Government Claims
23 Board pursuant to subdivision (a) or (b). The director shall deduct
24 and retain from any prisoner settlement or trial award, an
25 administrative fee that totals 5 percent of any amount paid from the
26 settlement or award to satisfy an outstanding restitution order or
27 fine pursuant to subdivision (j), unless prohibited by federal law.
28 The director shall deposit the administrative fee moneys in a
29 special deposit account for reimbursing administrative and
30 support costs of the restitution program of the Department of
31 Corrections. The director, at his or her discretion, may retain any
32 excess funds in the special deposit account for future
33 reimbursement of the department's administrative and support
34 costs for the restitution program or may transfer all or part of the
35 excess funds for deposit in the Restitution Fund.

36 (d) In any case in which a parolee owes a restitution fine
37 imposed pursuant to Section 1233, the Director of Corrections
38 may collect from the parolee any moneys owing on the restitution
39 fine amount, unless prohibited by federal law, and shall transfer
40 that amount to the California Victim Compensation and

Government Claims Board for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(e) In any case in which a parolee owes a direct order of restitution, imposed pursuant to Section 1231, the Director of Corrections may collect from the parolee any moneys owing, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(f) The director may deduct and retain from any moneys collected from parolees an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (d) or (e), unless prohibited by federal law. The director shall deduct and retain from any settlement or trial award of a parolee an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (j), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections shall collect the restitution order first pursuant to subdivision (b).

(h) When a parolee has both a restitution fine and order from the sentencing court, the Department of Corrections may collect the restitution order first, pursuant to subdivision (e).

(i) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars (\$50) for visits that include the inmate and one visitor, seventy dollars (\$70) for visits that include the inmate and two or three visitors, and eighty dollars (\$80) for visits that include the inmate and four or more visitors.

(j) Any compensatory or punitive damages awarded by trial or settlement to any inmate or parolee in connection with a civil action brought against any federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of any award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (c) and (f). The Department of Corrections shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(k) (1) Amounts transferred to the California Victim Compensation and Government Claims Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation and Government Claims Board. If the restitution payment to a victim is less than fifty dollars (\$50), then payment need not be forwarded to that victim until the payment reaches fifty dollars (\$50) or until 180 days from the date the first payment is received, whichever occurs sooner.

(2) In any case in which a victim cannot be located, the restitution revenues received by the California Victim Compensation and Government Claims Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner.

1 Amounts remaining in trust at the end of the specified period of
2 time shall revert to the Restitution Fund.

3 (3) Any victim failing to provide a current address within the
4 period of time specified in paragraph (2) may provide
5 documentation to the Department of Corrections, which in turn
6 shall verify that moneys were in fact collected on behalf of the
7 victim. Upon receipt of that verified information from the
8 Department of Corrections, the California Victim Compensation
9 and Government Claims Board shall transmit the restitution
10 revenues to the victim in accordance with the provisions of
11 subdivision (b).

12 SEC. 31. Section 3000 of the Penal Code is amended to read:

13 3000. (a) (1) The Legislature finds and declares that the
14 period immediately following incarceration is critical to
15 successful reintegration of the offender into society and to positive
16 citizenship. It is in the interest of public safety for the state to
17 provide for the supervision of and surveillance of parolees,
18 including the judicious use of revocation actions, and to provide
19 educational, vocational, family and personal counseling necessary
20 to assist parolees in the transition between imprisonment and
21 discharge. A sentence pursuant to Section 1168 or 1170 shall
22 include a period of parole, unless waived, as provided in this
23 section.

24 (2) The Legislature finds and declares that it is not the intent of
25 this section to diminish resources allocated to the Department of
26 Corrections for parole functions for which the department is
27 responsible. It is also not the intent of this section to diminish the
28 resources allocated to the Board of Prison Terms to execute its
29 duties with respect to parole functions for which the board is
30 responsible.

31 (3) The Legislature finds and declares that diligent effort must
32 be made to ensure that parolees are held accountable for their
33 criminal behavior, including, but not limited to, the satisfaction of
34 restitution fines and orders.

35 (4) Any finding made pursuant to Article 4 (commencing
36 with Section 6600) of Chapter 2 of Part 2 of Division 6 of the
37 Welfare and Institutions Code, that a person is a sexually violent
38 predator shall not toll, discharge, or otherwise affect that person's
39 period of parole.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be five years. Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under

1 paragraph (1), (2), or (3), as the case may be, whichever is earlier,
2 the inmate shall be discharged from custody. The date of the
3 maximum statutory period of parole under this subdivision and
4 paragraphs (1), (2), and (3) shall be computed from the date of
5 initial parole or from the date of extension of parole pursuant to
6 paragraph (3) and shall be a period chronologically determined.
7 Time during which parole is suspended because the prisoner has
8 absconded or has been returned to custody as a parole violator shall
9 not be credited toward any period of parole unless the prisoner is
10 found not guilty of the parole violation. However, in no case,
11 except as provided in Section 3064, may a prisoner subject to three
12 years on parole be retained under parole supervision or in custody
13 for a period longer than four years from the date of his or her initial
14 parole, and, except as provided in Section 3064, in no case may a
15 prisoner subject to five years on parole be retained under parole
16 supervision or in custody for a period longer than seven years from
17 the date of his or her initial parole or from the date of extension of
18 parole pursuant to paragraph (3).

19 (6) The Department of Corrections shall meet with each inmate
20 at least 30 days prior to his or her good time release date and shall
21 provide, under guidelines specified by the parole authority, the
22 conditions of parole and the length of parole up to the maximum
23 period of time provided by law. The inmate has the right to
24 reconsideration of the length of parole and conditions thereof by
25 the parole authority. The Department of Corrections or the Board
26 of Prison Terms may impose as a condition of parole that a prisoner
27 make payments on the prisoner's outstanding restitution fines or
28 orders imposed pursuant to Title 8.5 (commencing with Section
29 1230) of Part 2.

30 (7) For purposes of this chapter, the Board of Prison Terms
31 shall be considered the parole authority.

32 (8) The sole authority to issue warrants for the return to actual
33 custody of any state prisoner released on parole rests with the
34 Board of Prison Terms, except for any escaped state prisoner or
35 any state prisoner released prior to his or her scheduled release date
36 who should be returned to custody, and Section 3060 shall apply.

37 (9) It is the intent of the Legislature that efforts be made with
38 respect to persons who are subject to subparagraph (C) of
39 paragraph (1) of subdivision (a) of Section 290 who are on parole
40 to engage them in treatment.

1 SEC. 32. Section 730.6 of the Welfare and Institutions Code
2 is amended to read:

3 730.6. (a) (1) It is the intent of the Legislature that a victim
4 of conduct for which a minor is found to be a person described in
5 Section 602 who incurs any economic loss as a result of the
6 minor's conduct shall receive restitution directly from that minor.

7 (2) Upon a minor being found to be a person described in
8 Section 602, the court shall consider levying a fine in accordance
9 with Section 730.5. In addition, the court shall order the minor to
10 pay, in addition to any other penalty provided or imposed under the
11 law, both of the following:

12 (A) A restitution fine in accordance with subdivision (b).

13 (B) Restitution to the victim or victims, if any, in accordance
14 with subdivision (h).

15 (b) In every case where a minor is found to be a person
16 described in Section 602, the court shall impose a separate and
17 additional restitution fine. The restitution fine shall be set at the
18 discretion of the court and commensurate with the seriousness of
19 the offense as follows:

20 (1) If the minor is found to be a person described in Section 602
21 by reason of the commission of one or more felony offenses, the
22 restitution fine shall not be less than one hundred dollars (\$100)
23 and not more than one thousand dollars (\$1,000). A separate
24 hearing for the fine shall not be required.

25 (2) If the minor is found to be a person described in Section 602
26 by reason of the commission of one or more misdemeanor
27 offenses, the restitution fine shall not exceed one hundred dollars
28 (\$100). A separate hearing for the fine shall not be required.

29 (c) The restitution fine shall be in addition to any other
30 disposition or fine imposed and shall be imposed regardless of the
31 minor's inability to pay. This fine shall be deposited in the
32 Restitution Fund, the proceeds of which shall be distributed
33 pursuant to Section 13967 of the Government Code, as operative
34 prior to January 1, 2003, or pursuant to Chapter 5 (commencing
35 with Section 13950) of Part 4 of Division 3 of Title 2 of the
36 Government Code.

37 (d) (1) In setting the amount of the fine pursuant to
38 subparagraph (A) of paragraph (2) of subdivision (a), the court
39 shall consider any relevant factors including, but not limited to, the
40 minor's ability to pay, the seriousness and gravity of the offense

1 and the circumstances of its commission, any economic gain
2 derived by the minor as a result of the offense, and the extent to
3 which others suffered losses as a result of the offense. The losses
4 may include pecuniary losses to the victim or his or her dependents
5 as well as intangible losses such as psychological harm caused by
6 the offense.

7 (2) The consideration of a minor's ability to pay may include
8 his or her future earning capacity. A minor shall bear the burden
9 of demonstrating a lack of his or her ability to pay.

10 (e) Express findings of the court as to the factors bearing on the
11 amount of the fine shall not be required.

12 (f) Except as provided in subdivision (g), under no
13 circumstances shall the court fail to impose the separate and
14 additional restitution fine required by subparagraph (A) of
15 paragraph (2) of subdivision (a). This fine shall not be subject to
16 penalty assessments pursuant to Section 1464 of the Penal Code.

17 (g) In a case in which the minor is a person described in Section
18 602 by reason of having committed a felony offense, if the court
19 finds that there are compelling and extraordinary reasons, the court
20 may waive imposition of the restitution fine required by
21 subparagraph (A) of paragraph (2) of subdivision (a). When a
22 waiver is granted, the court shall state on the record all reasons
23 supporting the waiver.

24 (h) Restitution ordered pursuant to subparagraph (B) of
25 paragraph (2) of subdivision (a) shall be imposed in the amount of
26 the losses, as determined. If the amount of loss cannot be
27 ascertained at the time of sentencing, the restitution order shall
28 include a provision that the amount shall be determined at the
29 direction of the court at any time during the term of the
30 commitment or probation. The court shall order full restitution
31 unless it finds compelling and extraordinary reasons for not doing
32 so, and states them on the record. A minor's inability to pay shall
33 not be considered a compelling or extraordinary reason not to
34 impose a restitution order, nor shall inability to pay be a
35 consideration in determining the amount of the restitution order.
36 A restitution order pursuant to subparagraph (B) of paragraph (2)
37 of subdivision (a), to the extent possible, shall identify each victim,
38 unless the court for good cause finds that the order should not
39 identify a victim or victims, and the amount of each victim's loss
40 to which it pertains, and shall be of a dollar amount sufficient to

1 fully reimburse the victim or victims for all determined economic
2 losses incurred as the result of the minor's conduct for which the
3 minor was found to be a person described in Section 602, including
4 all of the following:

5 (1) Full or partial payment for the value of stolen or damaged
6 property. The value of stolen or damaged property shall be the
7 replacement cost of like property, or the actual cost of repairing the
8 property when repair is possible.

9 (2) Medical expenses.

10 (3) Wages or profits lost due to injury incurred by the victim,
11 and if the victim is a minor, wages or profits lost by the minor's
12 parent, parents, guardian, or guardians, while caring for the
13 injured minor. Lost wages shall include any commission income
14 as well as any base wages. Commission income shall be
15 established by evidence of commission income during the
16 12-month period prior to the date of the crime for which restitution
17 is being ordered, unless good cause for a shorter time period is
18 shown.

19 (4) Wages or profits lost by the victim, and if the victim is a
20 minor, wages or profits lost by the minor's parent, parents,
21 guardian, or guardians, due to time spent as a witness or in assisting
22 the police or prosecution. Lost wages shall include any
23 commission income as well as any base wages. Commission
24 income shall be established by evidence of commission income
25 during the 12-month period prior to the date of the crime for which
26 restitution is being ordered, unless good cause for a shorter time
27 period is shown.

28 A minor shall have the right to a hearing before a judge to
29 dispute the determination of the amount of restitution. The court
30 may modify the amount on its own motion or on the motion of the
31 district attorney, the victim or victims, or the minor. If a motion is
32 made for modification of a restitution order, the victim shall be
33 notified of that motion at least 10 days prior to the hearing on the
34 motion. When the amount of victim restitution is not known at the
35 time of disposition, the court order shall identify the victim or
36 victims, unless the court finds for good cause that the order should
37 not identify a victim or victims, and state that the amount of
38 restitution for each victim is to be determined. When feasible, the
39 court shall also identify on the court order, any cooffenders who
40 are jointly and severally liable for victim restitution.

1 (i) A restitution order imposed pursuant to subparagraph (B) of
2 paragraph (2) of subdivision (a) shall identify the losses to which
3 it pertains, and shall be enforceable as a civil judgment pursuant
4 to subdivision (r). The making of a restitution order pursuant to
5 this subdivision shall not affect the right of a victim to recovery
6 from the Restitution Fund in the manner provided elsewhere,
7 except to the extent that restitution is actually collected pursuant
8 to the order. Restitution collected pursuant to this subdivision shall
9 be credited to any other judgments for the same losses obtained
10 against the minor or the minor's parent or guardian arising out of
11 the offense for which the minor was found to be a person described
12 in Section 602. Restitution imposed shall be ordered to be made
13 to the Restitution Fund to the extent that the victim, as defined in
14 subdivision (j), has received assistance Victims of Crime Program
15 pursuant to Article 1 (commencing with Section 13959) of
16 Chapter 5 of Part 4 of Division 3 of Title 2 of the Government
17 Code, as operative prior to January 1, 2003, or pursuant to Chapter
18 5 (commencing with Section 13950) of Part 4 of Division 3 of Title
19 2 of the Government Code.

20 (j) For purposes of this section, "victim" shall include the
21 immediate surviving family of the actual victim.

22 (k) Nothing in this section shall prevent a court from ordering
23 restitution to any corporation, business trust, estate, trust,
24 partnership, association, joint venture, government, governmental
25 subdivision, agency, or instrumentality, or any other legal or
26 commercial entity when that entity is a direct victim of an offense.

27 (l) Upon a minor being found to be a person described in
28 Section 602, the court shall require as a condition of probation the
29 payment of restitution fines and orders imposed under this section.
30 Any portion of a restitution order that remains unsatisfied after a
31 minor is no longer on probation shall continue to be enforceable
32 by a victim pursuant to subdivision (r) until the obligation is
33 satisfied in full.

34 (m) Probation shall not be revoked for failure of a person to
35 make restitution pursuant to this section as a condition of probation
36 unless the court determines that the person has willfully failed to
37 pay or failed to make sufficient bona fide efforts to legally acquire
38 the resources to pay.

39 (n) If the court finds and states on the record compelling and
40 extraordinary reasons why restitution should not be required as

provided in paragraph (2) of subdivision (a), the court shall order, as a condition of probation, that the minor perform specified community service.

(o) The court may avoid ordering community service as a condition of probation only if it finds and states on the record compelling and extraordinary reasons not to order community service in addition to the finding that restitution pursuant to paragraph (2) of subdivision (a) should not be required.

(p) When a minor is committed to the Department of the Youth Authority, the court shall order restitution to be paid to the victim or victims, if any. Payment of restitution to the victim or victims pursuant to this subdivision shall take priority in time over payment of any other restitution fine imposed pursuant to this section.

(q) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(r) If the judgment is for a restitution fine ordered pursuant to subparagraph (A) of paragraph (2) of subdivision (a), or a restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a), the judgment may be enforced in the manner provided in Title 8.5 (commencing with Section 1230) of Part 2 of the Penal Code.

SEC. 33. Section 1752.81 of the Welfare and Institutions Code is amended to read:

1752.81. (a) Whenever the Director of the Youth Authority has in his or her possession in trust funds of a ward committed to the authority, the funds may be released for any purpose when authorized by the ward. When the sum held in trust for any ward by the Director of the Youth Authority exceeds five hundred dollars (\$500), the amount in excess of five hundred dollars (\$500) may be expended by the director pursuant to a lawful order of a court directing payment of the funds, without the authorization of the ward thereto.

(b) Whenever an adult or minor is committed to or housed in a Youth Authority facility and he or she owes a restitution fine imposed pursuant to Section 1233 of the Penal Code, or pursuant

1 to Section 729.6, 730.6 or 731.1, as operative on or before August
 2 2, 1995, the Director of the Youth Authority shall deduct the
 3 balance owing on the fine amount from the trust account deposits
 4 of a ward, up to a maximum of 50 percent of the total amount held
 5 in trust, unless prohibited by federal law. The director shall
 6 transfer that amount to the California Victim Compensation and
 7 Government Claims Board for deposit in the Restitution Fund in
 8 the State Treasury. Any amount so deducted shall be credited
 9 against the amount owing on the fine. The sentencing court shall
 10 be provided a record of the payments.

11 (c) Whenever an adult or minor is committed to, or housed in,
 12 a Youth Authority facility and he or she owes restitution to a victim
 13 imposed pursuant to Section 1231 of the Penal Code, or pursuant
 14 to Section 729.6, 730.6, or 731.1, as operative on or before August
 15 2, 1995, the Director of the Youth Authority shall deduct the
 16 balance owing on the order amount from the trust account deposits
 17 of a ward, up to a maximum of 50 percent of the total amount held
 18 in trust, unless prohibited by federal law. The director shall
 19 transfer that amount directly to the victim. If the restitution is owed
 20 to a person who has filed an application with the Victims of Crime
 21 Program, the director shall transfer that amount to the California
 22 Victim Compensation and Government Claims Board for direct
 23 payment to the victim or payment shall be made to the Restitution
 24 Fund to the extent that the victim has received assistance pursuant
 25 to that program. The sentencing court shall be provided a record
 26 of the payments made to victims and of the payments deposited to
 27 the Restitution Fund pursuant to this subdivision.

28 (d) Any compensatory or punitive damages awarded by trial or
 29 settlement to a minor or adult committed to the Department of the
 30 Youth Authority in connection with a civil action brought against
 31 any federal, state, or local jail or correctional facility, or any
 32 official or agent thereof, shall be paid directly, after payment of
 33 reasonable attorney's fees and litigation costs approved by the
 34 court, to satisfy any outstanding restitution orders or restitution
 35 fines against the minor or adult. The balance of any award shall be
 36 forwarded to the minor or adult committed to the Department of
 37 the Youth Authority after full payment of all outstanding
 38 restitution orders and restitution fines subject to subdivision (e).
 39 The Department of the Youth Authority shall make all reasonable
 40 efforts to notify the victims of the crime for which the minor or



1 adult was committed concerning the pending payment of any
2 compensatory or punitive damages. This subdivision shall apply
3 to cases settled or awarded on or after April 26, 1996, pursuant to
4 Sections 807 and 808 of the federal Prison Litigation Reform Act
5 of 1995 (Title 8, P.L. 104-134).

6 (e) The director shall deduct and retain from the trust account
7 deposits of a ward, unless prohibited by federal law, an
8 administrative fee that totals 10 percent of any amount transferred
9 pursuant to subdivision (b) and (c), or 5 percent of any amount
10 transferred pursuant to subdivision (d). The director shall deposit
11 the administrative fee moneys in a special deposit account for
12 reimbursing administrative and support costs of the restitution and
13 victims program of the Department of the Youth Authority. The
14 director, at his or her discretion, may retain any excess funds in the
15 special deposit account for future reimbursement of the
16 department's administrative and support costs for the restitution
17 and victims program or may transfer all or part of the excess funds
18 for deposit in the Restitution Fund.

19 (f) When a ward has both a restitution fine and a restitution
20 order from the sentencing court, the Department of the Youth
21 Authority shall collect the restitution order first pursuant to
22 subdivision (c).

23 (g) Notwithstanding subdivisions (a), (b), and (c), whenever
24 the Director of the Youth Authority holds in trust a ward's funds
25 in excess of five dollars (\$5) and the ward cannot be located, after
26 one year from the date of discharge, absconding from the
27 Department of the Youth Authority supervision, or escape, the
28 Department of the Youth Authority shall apply the trust account
29 balance to any unsatisfied victim restitution order or fine owed by
30 that ward. If the victim restitution order or fine has been satisfied,
31 the remainder of the ward's trust account balance, if any, shall be
32 transferred to the Benefit Fund to be expended pursuant to Section
33 1752.5. If the victim to whom a particular ward owes restitution
34 cannot be located, the money shall be transferred to the Benefit
35 Fund to be expended pursuant to Section 1752.5.

36 ~~SEC. 34. Section 1752.82 of the Welfare and Institutions~~
37 ~~Code is amended to read:~~

38 ~~1752.82. (a) Whenever an adult or minor is committed to or~~
39 ~~housed in a Youth Authority facility and he or she owes restitution~~
40 ~~to a victim or a restitution fine imposed pursuant to Title 8.5~~

1 ~~(commencing with Section 1230) of Part 2 of the Penal Code, or~~
2 ~~pursuant to Section 729.6, as operative on or before August 2,~~
3 ~~1994, August 2, 1995, Section 730.6 or 731.1, as operative on or~~
4 ~~before August 2, 1995, the director may deduct a reasonable~~
5 ~~amount not to exceed 50 percent from the wages of that adult or~~
6 ~~minor and the amount so deducted, exclusive of the costs of~~
7 ~~administering this section, which shall be retained by the director,~~
8 ~~shall be transferred to the California Victim Compensation and~~
9 ~~Government Claims Board for deposit in the Restitution Fund in~~
10 ~~the State Treasury in the case of a restitution fine, or, in the case~~
11 ~~of a restitution order, and upon the request of the victim, shall be~~
12 ~~paid directly to the victim. Any amount so deducted shall be~~
13 ~~credited against the amount owing on the fine or to the victim. The~~
14 ~~committing court shall be provided a record of any payments.~~

15 ~~(b) A victim who has requested that restitution payments be~~
16 ~~paid directly to him or her pursuant to subdivision (a) shall provide~~
17 ~~a current address to the Youth Authority to enable the Youth~~
18 ~~Authority to send restitution payments collected on the victim's~~
19 ~~behalf to the victim.~~

20 ~~(c) In the case of a restitution order, whenever the victim has~~
21 ~~died, cannot be located, or has not requested the restitution~~
22 ~~payment, the director may deduct a reasonable amount not to~~
23 ~~exceed 50 percent of the wages of that adult or minor and the~~
24 ~~amount so deducted, exclusive of the costs of administering this~~
25 ~~section, which shall be retained by the director, shall be transferred~~
26 ~~to the California Victim Compensation and Government Claims~~
27 ~~Board, pursuant to subdivision (d), after one year has elapsed from~~
28 ~~the time the ward is discharged by the Youthful Offender Parole~~
29 ~~Board. Any amount so deducted shall be credited against the~~
30 ~~amount owing to the victim. The funds so transferred shall be~~
31 ~~deposited in the Restitution Fund.~~

32 ~~(d) Where the Youth Authority has collected restitution~~
33 ~~payments on behalf of a victim, the victim shall request those~~
34 ~~payments no later than one year after the ward has been discharged~~
35 ~~by the Youthful Offender Parole Board. Any victim who fails to~~
36 ~~request those payments within that time period shall have~~
37 ~~relinquished all rights to the payments, unless he or she can show~~
38 ~~reasonable cause for failure to request those payments within that~~
39 ~~time period.~~

~~(e) The director shall transfer to the California Victim Compensation and Government Claims Board all restitution payments collected prior to the effective date of this section on behalf of victims who have died, cannot be located, or have not requested restitution payments. The California Victim Compensation and Government Claims Board shall deposit these amounts in the Restitution Fund.~~

~~(f) For purposes of this section, "victim" includes a victim's immediate surviving family member, on whose behalf restitution has been ordered.~~

SEC. 34. Section 1752.82 of the Welfare and Institutions Code is amended to read:

1752.82. (a) Whenever an adult or minor is committed to or housed in a Youth Authority facility and he or she owes restitution to a victim or a restitution fine imposed pursuant to ~~Section 13967, as operative on or before September 28, 1994, of the Government Code, or Section 1202.4 of the Penal Code, or Section 1203.04, as operative on or before August 2, 1994, Title 8.5 (commencing with Section 1230) of Part 2 of the Penal Code, or pursuant to Section 729.6, as operative on or before August 2, 1995, Section 730.6 or 731.1, as operative on or before August 2, 1995,~~ the director may deduct a reasonable amount not to exceed 50 percent from the wages of that adult or minor and the amount so deducted, exclusive of the costs of administering this section, which shall be retained by the director, shall be transferred to the ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* for deposit in the Restitution Fund in the State Treasury in the case of a restitution fine, or, in the case of a restitution order, and upon the request of the victim, shall be paid directly to the victim. Any amount so deducted shall be credited against the amount owing on the fine or to the victim. The committing court shall be provided a record of any payments.

(b) A victim who has requested that restitution payments be paid directly to him or her pursuant to subdivision (a) shall provide a current address to the Youth Authority to enable the Youth Authority to send restitution payments collected on the victim's behalf to the victim.

(c) In the case of a restitution order, whenever the victim has died, cannot be located, or has not requested the restitution payment, the director may deduct a reasonable amount not to

1 exceed 50 percent of the wages of that adult or minor and the
2 amount so deducted, exclusive of the costs of administering this
3 section, which shall be retained by the director, shall be transferred
4 to the ~~State Board of Control~~ *California Victim Compensation and*
5 *Government Claims Board*, pursuant to subdivision (d), after one
6 year has elapsed from the time the ward is discharged by the
7 Youthful Offender Parole Board. Any amount so deducted shall be
8 credited against the amount owing to the victim. The funds so
9 transferred shall be deposited in the Restitution Fund.

10 (d) Where the Youth Authority has collected restitution
11 payments on behalf of a victim, the victim shall request those
12 payments no later than one year after the ward has been discharged
13 by the Youthful Offender Parole Board. Any victim who fails to
14 request those payments within that time period shall have
15 relinquished all rights to the payments, unless he or she can show
16 reasonable cause for failure to request those payments within that
17 time period.

18 (e) The director shall transfer to the ~~State Board of Control~~
19 *California Victim Compensation and Government Claims Board*
20 all restitution payments collected prior to the effective date of this
21 section on behalf of victims who have died, cannot be located, or
22 have not requested restitution payments. The ~~State Board of~~
23 ~~Control~~ *California Victim Compensation and Government Claims*
24 *Board* shall deposit these amounts in the Restitution Fund.

25 (f) For purposes of this section, "victim" includes a victim's
26 immediate surviving family member, on whose behalf restitution
27 has been ordered.

28 SEC. 35. Section 1766.1 of the Welfare and Institutions Code
29 is amended to read:

30 1766.1. When permitting an adult or minor committed to the
31 Youth Authority his or her liberty pursuant to subdivision (a) of
32 Section 1766, the Youthful Offender Parole Board shall impose as
33 a condition thereof that the adult or minor pay in full any restitution
34 fine or restitution order imposed pursuant to Title 8.5
35 (commencing with Section 1230) of Part 2 of the Penal Code, or
36 Section 730.6 or 731.1, as operative on or before August 2, 1995.
37 Payment shall be in installments set in an amount consistent with
38 the adult's or minor's ability to pay.

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